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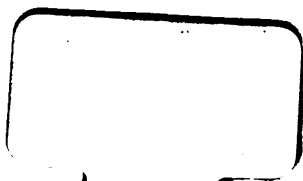
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THE  
LAW AND PRACTICE  
RELATING TO  
CRIMINAL INFORMATIONS,  
AND  
INFORMATIONS  
IN THE NATURE OF  
QUO WARRANTO;  
WITH  
FORMS OF THE PLEADINGS AND PROCEEDINGS.

BY  
W. R. COLE, Esq.  
OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

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1847.



TO  
THE RIGHT HONOURABLE  
THOMAS LORD DENMAN,  
LORD CHIEF JUSTICE,  
AND  
THE HONOURABLE THE OTHER JUDGES  
OF  
THE COURT OF QUEEN'S BENCH,  
THIS WORK  
IS  
MOST RESPECTFULLY INSCRIBED  
BY  
THE AUTHOR.



## PREFACE.

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THIS little work is the result of a careful study and arrangement of the Cases relating to Criminal Informations, and Informations in the nature of Quo Warranto. The latter may with propriety be regarded as a species of Criminal Information, viz. for a misdemeanor in usurping some public office or franchise; but of late years they have been considered as more in the nature of a civil remedy, the object generally being *to try the right and title* of the defendant to the office or franchise claimed and exercised by him.

The general plan of the work may be readily seen from the "Table of Contents." It is divided into two books, the first treating of Criminal Informations, the second of Informations in the nature of Quo Warranto. To each of these there is an Appendix of *Forms*, including not only the Pleadings, but also the Affidavits, Rules, Writs, and other proceedings; the whole is intended as a complete practical treatise upon the above subjects.

The Author has endeavoured to introduce each case cited into its most appropriate place; and having taken much pains to render the work as correct as possible, he trusts that allowance will be made for any little errors or defects, and that this (his first publication) will meet with a favourable reception.

P. S.—The recent statute, 6 Vict. c. 20, intituled "An Act for abolishing certain Offices on the Crown Side of the Court of Queen's Bench, and for regulating the Crown Office," and the alterations thereby made, so far as the same affect this work, are stated in the *Addenda* [post, 393 to 396]. In consequence of the passing of that Statute it

JUNE, 1847.—15

will be more necessary than before, that Attorneys (especially those concerned for or against Municipal Corporations or members thereof) should make themselves acquainted with the contents of this volume, as they will soon have to act without the guidance and assistance of Clerks in Court.

1, ELM COURT TEMPLE, *June*, 1843.



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# CRIMINAL INFORMATION, S,

&c. &c.

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## BOOK I.

### CRIMINAL INFORMATION, S.

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#### CHAPTER I.

OF THE NATURE OF CRIMINAL INFORMATION, S AND HEREIN OF THE STATUTE  
4 & 5 W. & M. c. 18.

AN information for an offence is a surmise or suggestion upon record, on behalf of the king (or queen regnant), to a court of criminal jurisdiction, and is, to all intents and purposes, the king's suit. (Wilkes v. The King, in error, 4 Bro. P. C. 360.) It differs principally from an indictment in this, viz. that, in an indictment, the facts constituting the offence are presented to the court upon the oath of a grand jury; whereas, in informations, the facts are presented by way of suggestion or information to the court by some authorized public officer on behalf of the crown. (2 Hawk. P. C. c. 26, s. 4.) Criminal informations derive their origin from the common law. (Prynne's case, 5 Mod. 459: S. C. nom. Rex v. Berchet and Others, 1 Shower, 106.) They may be filed by the Attorney-General ex officio, upon his own discretion, without any leave of the court. (Rex v. Phillips and Others, 3 Burr. 1564: Rex v. The Mayor of Plymouth, 4 Burr. 2089.) During the vacancy of that office they may be filed by the Solicitor-General, and, in such case, it is not necessary in point of \*law to aver upon the record that the attorney-general's office is vacant. (Wilkes v. [ \*2 ] The King, in error, 4 Bro. P. C. 360; 4 Burr. 2553; Id. 2577, S. C.) They may also be filed by the Queen's Coroner and Attorney (commonly called the Master of the Crown office;) but not without previous leave of the Court of Queen's Bench, given in open court, and a recognizance being entered into by the prosecutor, pursuant to the stat. 4 & 5 W. & M. c. 18, s. 2.

In 4 Blac. Com. c. 23, s. 3, it is said of criminal informations, that they are of two kinds:—"First, those which are truly and properly the king's own suits, and filed ex officio by his own immediate officer the attorney-general; secondly, those in which though the king is the nominal prosecutor, yet it is at the relation of some private person or common informer, and they are filed by the king's coroner and attorney in the Court of King's Bench,

usually called the Master of the Crown Office, who is for this purpose the standing officer of the public. The objects of the king's own prosecution, filed *ex officio* by his own attorney-general, are properly such enormous misdemeanors as peculiarly tend to disturb or endanger his government, or to molest or affront him in the regular discharge of his royal functions. For offences so high and dangerous, in the punishment or prevention of which a moment's delay would be fatal, the law has given to the crown the power of an immediate prosecution, without waiting for any previous application to any other tribunal, which power thus necessary not only to the ease and safety, but even to the very existence of the executive magistrate, was originally reserved in the great plan of the English constitution, wherein provision is wisely made for the due preservation of all its parts. The objects of the other species of informations filed by the Master of the Crown Office, upon the complaint or relation of a private subject, are, any gross and notorious misdemeanors, riots, batteries, libels, and other immoralities of an atrocious kind, not peculiarly tending to disturb the government (for those are left to the care of the attorney-general), but which, on account of their magnitude or pernicious \*example, deserve the most public animadversion. And when an information is filed either thus or by the attorney-general *ex officio*, it must be tried by a petit jury of the county where the offence arises, after which, if the defendant be found guilty, the court must be resorted to for his punishment. There can be no doubt but that this mode of prosecution by information (or suggestion), filed on record by the king's attorney-general or by his coroner or Master of the Crown Office in the Court of King's Bench, is as ancient as the common law itself. For, as the king was bound to prosecute, or at least to lend the sanction of his name to a prosecutor, whenever the grand jury informed him upon their oaths that there was a sufficient ground for instituting a criminal suit: so, when these, his immediate officers, were otherwise sufficiently assured that a man had committed a gross misdemeanor, either personally against the king or his government, or against the public peace and good order, they were at liberty, without waiting for any further intelligence, to convey that information to the Court of King's Bench by a suggestion on record, and to carry on the prosecution in his Majesty's name. But these informations (of every kind) are confined by the constitutional law to mere misdemeanors only; for, whenever any capital offence is charged, the same law requires that the accusation be warranted by the oath of twelve men before the party shall be put to answer it. And, as to those offences in which informations were allowed as well as indictments, so long as they were confined to this high and respectable jurisdiction, and were carried on in a legal and regular course in his Majesty's Court of King's Bench, the subject had no reason to complain. The same notice was given—the same process was issued—the same pleas were allowed—the same trial by jury was had—the same judgment was given by the same judges, as if the prosecution had originally been by indictment. But when the statute 3 Hen. 7, c. 1, had extended the jurisdiction of the Court of Star Chamber, the members of which were the sole judges of the law, the fact, and the penalty; and when the [\* 4] \*statute 2 Hen. 7, c. 3, had permitted informations to be brought by any informer, upon any penal statute not extending to life or member, at the assizes, or before the justices of the peace, who were to hear and deter-

mine the same according to their own discretion, then it was that the legal and orderly jurisdiction of the Court of King's Bench fell into disuse and oblivion, and Empson and Dudley (the wicked instruments of king Henry 7th,) by hunting out obsolete penalties, and this tyrannical mode of prosecution, with other oppressive devices, continually harassed the subject, and shamefully enriched the crown. The latter of these acts was soon, indeed, repealed by statute 1 Hen. 8, c. 6; but the Court of Star Chamber continued in high vigour, and daily increasing its authority, for more than a century longer, till finally abolished by statute 16 Car. 1, c. 10. Upon this dissolution, the old common-law authority of the Court of King's Bench, as the *custos morum* of the nation, being found necessary to reside somewhere for the peace and good government of the kingdom, was again revived in practice. And it is observable, that, in the same act of Parliament which abolished the Court of Star Chamber, a conviction by information is expressly reckoned up as one of the legal modes of conviction of such persons as should offend a third time against the provisions of that statute. It is true, Sir Matthew Hale, who presided in this court soon after the time of such revival, is said to have been no friend to this method of prosecution: and, if so, the reason of such, his dislike, was probably the ill use which the Master of the Crown Office then made of his authority, by permitting the subject to be harassed with vexatious informations whenever applied to by any malicious or revengeful prosecutor, rather than his doubt of their legality or propriety upon urgent occasions. For the power of filing informations without any control then resided in the breast of the master, and being filed in the name of the king, they subjected the prosecutor to no costs, though on trial they proved to be groundless. This oppressive use of them, in the times preceding the Revolution, \*occasioned a struggle, soon after the accession of King William, to procure a declaration of their illegality, [\* 5 ] by the judgment of the Court of King's Bench. But Sir John Holt, who then presided there, and all the judges were clearly of opinion that this proceeding was grounded on the common law, and could not be then impeached. And, in a few years afterwards, a more temperate remedy was applied in Parliament by statute 4 & 5 W. & M. c. 18, which enacts that the clerk of the crown shall not file any information without express direction from the Court of King's Bench, and that every prosecutor, permitted to promote such information, shall give security by a recognizance of £20 (which now seems to be too small a sum) to prosecute the same with effect, and to pay costs to the defendant in case he be acquitted thereon, unless the judge who tries the information shall certify there was reasonable cause for filing it, and, at all events, to pay costs, unless the information shall be tried within a year after issue joined. But there is a proviso in this act, that it shall not extend to any other informations than those which are exhibited by the Master of the Crown Office; and, consequently, informations at the king's own suit, filed by his attorney-general, are no way restrained thereby."

It may be convenient here to state fully the provisions of the above-mentioned statute. By 4 & 5 W. & M. c. 18, intituled "An Act to prevent malicious Informations in the Court of King's Bench, and for the more easy reversal of Outlawries in the same court;" after reciting, that "whereas divers malicious and contentious persons have more of late than in times past procured to be exhibited and prosecuted informations in their

Majesties' Court of King's Bench at Westminster, against persons in all the counties of England for trespasses, batteries, and other misdemeanors, and after the parties so informed against have appeared to such informations and pleaded to issue, the informers do very seldom proceed any further, whereby the persons so informed against are put to great charges in their defence; and although at the trials of such \*informations, ver- [\*6] dictis are given for them, or a noli prosequi be entered against them, they have no remedy for obtaining costs against such informers;" it is enacted, (sect. 2), "That from and after the first day of Easter term, in the year of our Lord 1693, the clerk of the crown in the said Court of King's Bench for the time being, shall not, without express order to be given by the said court in open court, exhibit, receive, or file any informations for any of the causes aforesaid, or issue out any process thereupon, before he shall have taken or shall have delivered to him a recognizance from the person or persons procuring such information to be exhibited, with the place of his, her, or their abode, title or profession, to be entered to the person or persons against whom such information or informations is or are to be exhibited, in the penalty of twenty pounds, that he, she, or they will effectually prosecute such informations or information, and abide by and observe such orders as the said court shall direct, which recognizance the said clerk of the crown, and also every justice of the peace of any county, city, franchise, or town corporate, (where the cause of any such information shall arise), are hereby empowered to take; after the taking whereof by the said clerk of the crown or the receipt thereof from any justice of the peace, the said clerk of the crown shall make an entry thereof upon record, and shall file a memorandum thereof in some public place in his office, that all persons may resort thereunto without fee; and in case any person or persons, against whom any information or informations for the causes aforesaid, or any of them, shall be exhibited, shall appear thereunto and plead to issue, and that the prosecutor or prosecutors of such information or informations shall not, at his and their proper costs and charges, within one whole year next after issue joined therein, procure the same to be tried; or if upon such trial a verdict pass for the defendant or defendants; or in case the said informer or informers procure a noli prosequi to be entered; then and in any of the said cases the said Court of King's Bench is hereby authorized to award to \*the said defendant and defendants [\*7] his, her, or their costs, unless the judge, before whom such informations shall be tried, shall, at the trial of such information, in open court certify upon record that there was a reasonable cause for exhibiting such information. And in case the said informer or informers shall not, within three months next after the said costs taxed and demand made thereof, pay to the said defendant or defendants the said costs, then the said defendant and defendants shall have the benefit of the said recognizance to compel them thereunto." Sect. 6 provides, "that nothing in this act relating to informations shall extend, or be construed to extend to any other informations than such as are or shall be exhibited in the name of their Majesties' coroner or attorney in the court of King's Bench for the time being, (commonly called the Master of the Crown Office), any thing in the said act contained to the contrary notwithstanding." Sect. 7 enacts, "that, upon the demise of any king or Queen of this realm, all pleas to informations in

the said court shall stand and be good in law without calling defendants to plead again to the same, unless the defendants desire so to do, and make request to the said court for that purpose within five months next after such demise, any law or usage to the contrary notwithstanding."

In *Rex v. Jolliffe*, (4 T. R. 290), Lord Kenyon, C. J. said—"Before the statute 4 & 5 W. & M. c. 18, it was in the power of any individual to file an information, without disclosing to the court the grounds on which it was exhibited. But that practice being attended with the inconveniences recited in the preamble to that statute, it was enacted that no information should be held [by the Master of the Crown Office] without the express order of the court, publicly given. That statute does not enumerate the grounds which are sufficient to enable us to grant the information; but *the legislature left it to our discretion, trusting that we should not so far transgress our duty as to go beyond the rules of sound discretion*. In ordinary cases, affidavits are sworn in the court for the express purpose of \*praying an information upon them; but that does not preclude us from granting an information on affidavits equally authentic, although [\*8] not made for that purpose." And, accordingly, the court granted a rule for a criminal information, upon affidavits sworn before a judge at Nisi Prius in another prosecution against the same defendant.

In *Rex v. Robinson*, (1 W. Blac. 541), Lord Mansfield C. J., said—"Informations at common law (which are very ancient in this court) were filed by the coroner, who did it upon any application as a matter of course. The statute was therefore made to limit it, and other grounds there are by which the court has limited itself, —1st. as to the merits of the person applying, for they may be under such circumstances as that the court will not interpose to favour them. 2nd, The time of application; as to this there is no precise number of weeks, months, or years. But if delayed, the delay must be reasonably accounted for; this consideration is more necessary in election contests than in others—there is ill-blood enough without this addition to it. 3rd, The suspicious state of the case *ex euentiâ rei*. 4th The consequences of granting the information; on which account the court laid down the rule, that they would not grant one for bribery at parliamentary elections, till after two years were expired, in which civil actions may be brought."

[\*9]

## \*CHAPTER II.

### IN WHAT CASES CRIMINAL INFORMATION IS FILED BY THE ATTORNEY-GENERAL EX OFFICIO.

THE attorney-general may exhibit an *ex officio* information for any misdemeanor whatever; but not for treasons, felonies, or misprision of treason; (Comyns's Dig. tit. Information, (A.); Bacon's Abr. tit. Information, (A.); 2 Hawk. c. 26, s. 3; Arch. Pl. & Ev. C. C. 69, 8th edit.); for wherever any capital offence is charged, or an offence so highly penal as misprision of

treason, the law of England requires that the accusation should be warranted by the oath of twelve men, before the defendant can be put to answer it. (2 Hale, 151; 1 Chit. Crim. L. 165; Id. 844.) In cases of *misdemeanor*, the law has entrusted the attorney-general, on behalf of the crown, with a discretionary power of filing informations; and for that reason, the Court of Queen's Bench will never *give leave* to the attorney-general on behalf of the crown to exhibit a criminal information. He has the right to exhibit one *ex officio* on his own responsibility and discretion; and, if he think proper to do so, he may summon the defendant to shew cause before him why the information should not be filed before he signs it. (Rex v. Phillips and Others, 3 Burr. 1564; Rex v. The Mayor of Plymouth, 4 Burr. 2089.) He may of course receive affidavits of the facts before filing the information. (Rex v. Morgan, 11 East, 457.)

But although the attorney-general *may*, if he think fit, exhibit a criminal information *ex officio* for any misdemeanor whatever; yet, in practice, he seldom does so, except when directed by the House of Lords, or the House [ \*10 ] of Commons, or the Lords of the Treasury, or the \*Commissioners of some public department, ex. gr. the Excise, Customs, Stamps and Taxes, War Office, Admiralty, &c., or where the case is of a very serious nature. The usual objects of an *ex officio* information are, properly, such enormous misdemeanors as peculiarly tend to disturb or endanger the Queen's government, or to molest or affront her in the regular discharge of her royal functions, (4 Blac. Com. c. 23, s. 3,) or materially to prejudice the public generally; such, for instances, as seditious riots not amounting to high treason; seditious or blasphemous or obscene libels or words; libels upon the Queen or upon the ministers of state; libels upon foreign ambassadors; libels upon the judges or other high officers, reflecting upon their conduct in the execution of their duties, and imputing corrupt or improper motives; obstructing such officers in the execution of their duties; obstructing officers of the customs, excise, or taxes in the collection of the revenue, or in making searches, seizures, &c.; against public officers for bribery, or for other corrupt or oppressive conduct, and the like. But, unless there be some special reason for an information instead of an indictment, the attorney-general will not, usually, in the exercise of his discretion, take upon himself the responsibility of exhibiting one: for an attorney-general who makes too free use of his power in this respect, will soon become very unpopular, and may perhaps even endanger the stability of the ministry.

The following are instances in which informations have been exhibited by the attorney-general *ex officio*, viz., by direction of the House of Lords, for a misdemeanor at common law for forging an indorsement on a paper writing or certificate, in the name of the Duke of Buckingham, touching a quantity of alum charged to the Duke's account. (Rex v. Ward, Esq., 2 Lord Raym. 1461; Id., 3 Lord Raym. 538; Cro. C. C. 259). By direction of the House of Commons, for bribery at a parliamentary election. (Reg. v. Long, M. T. 1841. See the form post, Appendix A., No. 13.) By direction of the House of Commons, for imprisoning Lord Pigot, [ \*11 ] the governor of Madras, and subverting the \*government of that settlement. (Rex v. Stratton and Others, Dougl. 227.) For a riot and conspiracy in the King's Bench Prison, and attempting to blow up the



wall thereof with gunpowder in 1785. (3 Chit. Crim. L. 1150; Cro. C. C. 464.) For a riot and disturbance of commissioners acting under the property tax acts. (2 Chit. Crim. L. 490). For insulting and vilifying them whilst in the execution of their duty. (3 Chit. Crim. L. 916.) For a riot and breaking open the house of the ambassador from the Duke of Savoy, and taking from thence divers goods. (2 Chit. Crim. L. 58.) For a serious riot. (Rex v. Green, Cas. temp. Hardwicke, 209.) Against a pilot for breach of quarantine. (Rex v. Harris, 4 T. R. 202; 2 Chit. Crim. L. 551.) For aiding a prisoner of war to escape. (Cro. C. C. 534.) For a seditious libel in the shape of resolutions, at a public meeting, for a subscription "to be applied to the relief of the widows, orphans, and aged parents of our beloved American fellow-subjects, who, faithful to the character of Englishmen, preferring death to slavery, were for that reason only inhumanly murdered by the king's troops at Lexington and Concord, in the province of Massachusetts, on the 19th of last April." (Rex v. Horne, Cowp. 672; Cro. C. C. 294; Arch. Pl. & Ev. C. C. 518, 8th ed.) For a seditious and scandalous libel published in the North Briton, No. 45. (Rex v. Wilkes, 4 Burr. 2527; Rex v. Kearsley, 1 W. Blac. 540; Rex v. Williams, 1 W. Bl. 541.) For seditious libel in the shape of a letter from General Ludd (a fictitious name) to the editor of the Nottingham Review. (Rex v. Sutton, 4 M. & S. 532). For a seditious libel against the king's government and troops, in the shape of an address to the electors of Westminster. (Rex v. Sir Francis Burdett, Bart., 3 B. & A. 717; Id., 4 B. & A. 95. 115. 314. See form of the information, S. C. 4 B. & A. 115, note.) For a libel on the royal family. (2 Chit. Crim. L. 88.) For a libel on the Prince Regent. (Rex v. Leigh, 3 Chit. Crim. L. 882.) For a libel in a newspaper, falsely imputing that his Majesty (Geo. 4) laboured under insanity, and that the writer communicated the facts from \*authority. (Rex v. Harvey and Another, 2 B. & C. 257; 3 D. & [ \*12 ] R. 464.) For a blasphemous libel. (Rex v. Waddington, 1 B. & C. 26; Rex v. Carlisle, 3 B. & A. 161; Rex v. Eaton, 2 Chit. Crim. L. 14.) For an obscene and impious libel, intitled "An Essay on Woman, &c." (Rex v. Wilkes, 4 Burr. 2527, 2nd count.) For an obscene libel in the shape of a little book, intitled "Venus in the Cloister; or, the Nun in her Smock," published with intent to corrupt the morals of the subjects of this realm. (Rex v. Curl, 2 Stra. 788.) Against the printer of a newspaper, for publishing an advertisement by a married woman offering to become a kept mistress. (3 Chit. Crim. L. 788.) For a libel in French, on Bonaparte, the then chief consul, tending to create discord between this country and France. (Rex v. Peltier, 2 Chit. Crim. L. 52.) For a libel on the Russian ambassador, accusing him of having sent advice to the enemies of this country. (Rex v. Bew, 2 Chit. Crim. L. 54; 4 Went. Prec. 410.) For a libel on the chief justice and the rest of the judges of the Court of King's Bench, imputing that they had acted arbitrarily, partially, and corruptly, in admitting one John Hill to bail, upon a writ of habeas corpus. (Rex v. Kent, 3 Chit. Crim. L. 878; 4 Went. Prec. 414.) For a libel on a judge and jury for acquitting a man tried before them for murder. (Rex v. White, 1 Camp. 359.) For obstructing excise officers in the execution of their duties. (4 Went. Prec. 375 to 385; Id. 392 to 407; Id. 437; 2 Chit. Crim. L. 127 to 141). For obstructing custom-house officers in the execution of their

duties. (4 Went. Prec. 395 to 391, and see *Rex v. The Mayor of Plymouth*, 4 Burr. 2089.) For offering to bribe custom-house officers to give up and to refrain from seizing goods forfeited on 24 Geo. 3. (3 Chit. Crim. L. 693; *Id.* 695.) Against a custom-house officer for corruptly taking a bribe and giving up goods forfeited. (3 Chit. Crim. L. 689.) Against an officer for receiving presents in India, contrary to the statute 33 Geo. 3, c. 52, s. 62. (*Rex v. Stevens*, 5 East, 244; 3 Chit. Crim. L. 697.) Against traders and others for violating or attempting to evade the provisions of various acts of Parliament connected with the excise or customs. [\* 13] or relating to trade, &c. (4 Went. Prec. 437 to 546.) Where a statute creates a penalty, and says that one moiety shall be to the use of the king, and the other to a common informer, the king may sue for the whole, unless a common informer has commenced a *qui tam* suit for the penalty. In such a case the king may recover the penalty by an information filed by the attorney-general in this court. (*Rex v. Hymer*, 7 T. R. 536.) On the other hand, where the whole of a penalty is to go to the crown, it can be sued for only by and in the name of the attorney-general *ex officio*. (*Rex v. Hendricks*, 2 Stra. 1234.)

The court will not, upon the application of the defendant, restrain the attorney-general from filing an *ex-officio* information, upon the ground that a criminal information has already been granted for the same cause. But where the attorney-general filed an *ex officio* information after a criminal information had been granted for the same offence at the instance of a private prosecutor, the court stayed all proceedings upon the first information until further order. (*Rex v. Alexander*, E. T. 1830; Arch. Pl. & Ev. C. 70, 8th ed.; *Id.* 76, S. C.)

[\*14]

## \* CHAPTER III.

IN WHAT CASES CRIMINAL INFORMATIONS ARE FILED BY THE MASTER OF THE CROWN OFFICE, WITH LEAVE OF THE COURT, AT THE INSTANCE OF A PRIVATE PROSECUTOR:—1. FOR LIBELS. 2. AGAINST MAGISTRATES. 3. FOR BRIBERY. 4. FOR OFFENCES AGAINST PUBLIC JUSTICE. 5. FOR OFFENCES AGAINST THE PUBLIC PEACE. 6. FOR OFFENCES AGAINST PUBLIC TRADE. 7. IN OTHER CASES.

*For what Offences generally.*—THE Court of Queen's Bench may, in the exercise of their discretion, give leave to file an information in the name of the Queen's coroner and attorney (commonly called the Master of the Crown Office), for any misdemeanor; but not for treason, felonies, or misprision of treason, the law in such cases requiring that the accusation should be warranted by the oath of twelve men before the defendant can be put to answer it. (Ante, 9.) In no case whatever can a criminal information be filed by and in the name of the Master of the Crown Office, without the previous express order of the Court of Queen's Bench, given in open court.

(4 & 5 W. & M. c. 18, s. 2 ; Rex v. Joliffe, 4 T. R. 290 ; Rex v. Howell, Cas. temp. Hardwicke, 247.) Nor can process issue thereon without a recognizance in £20, entered into by the prosecutor pursuant to the above statute. (Rex v. The Mayor and Aldermen of Hertford, 1 Salk. 376 ; Carthew, 503, S. C. ; 2 Hawk. c. 26, ss. 8. 10 ; Rex v. Roberts, 2 B. & Adol. 63.)

But although the court have the power to grant criminal informations for any misdemeanor whatever, they will not, in the exercise of a sound discretion, permit such informations to be filed, except in serious cases, as for gross and notorious misdemeanors, riots, batteries, libels, and other immoralities of an atrocious kind, not peculiarly \*tending to disturb the government, (for those are left to the care of the attorney-general,) but [\*15] which, on account of their magnitude or pernicious example, deserve the most public animadversion. (4 Blac. Com. c. 23, s. 3 ; 1 Chit. Crim. L. 850.) Moreover, the court always consider an application for a criminal information as a *summary extraordinary remedy depending entirely on their discretion*, and therefore not only must the offence itself be of a serious nature, but the prosecutor must apply promptly, or must satisfactorily account for any apparent delay. He must also come into court with clean hands, and be free from blame with reference to the transaction complained of. He must prove his entire innocence of every thing imputed to him, and must produce to the court such legal evidence of the offence having been committed by the defendant as would warrant a grand jury in finding a true bill against the defendant, otherwise he will be left to his ordinary remedy by action or indictment.

We propose to consider the subject fully under the following heads : viz. 1st, For what offences a criminal information will or will not be granted. 2nd, *When*, i. e. within what time the application may be made. 3rd, *By whom*, and herein of the disqualification of a prosecutor by misconduct, or by adopting another remedy. 4th, What the affidavits in support of the application must state, and how they should be framed generally. 5th, How the application is made, and the practice thereon, and how cause may be shewn against it. We shall afterwards treat of the information itself, and the subsequent proceedings thereon.

In the present chapter we shall consider "for what offences a criminal information will or will not be granted," under the following classification ; viz.—1. For libels. 2. Against magistrates. 3. For bribery. 4. For offences against public justice. 5. For offences against the public peace. 6. For offences against public trade. 7. Other cases.

1. *For Libels.*—Criminal informations are more often \*granted [\*16] for libels than for any other offence. The prosecutor thereby obtains *an early opportunity of vindicating his character in a court of justice* ; for he must apply promptly, and in support of his application he must swear to his entire innocence of whatever is imputed to him. If the application fail, he may afterwards prefer an indictment, but he cannot without express leave of the court bring a civil action to recover damages. (See post, 19.)

The court will grant a criminal information for a libel reflecting on a *public body*, as the clergy of the diocese of Durham, (Rex v. Williams, 5

B. & A. 595;) the directors of the East India Company, (Rex v. Jenour, 7 Mod. 400;) the justices of the peace for a county, (Rex v. Alderton, and Rex v. Holloway, cited 5 B. & A. 596.) If the persons composing the class libelled are quite uncertain, an information will not be granted; but it is otherwise where the reflection is upon the whole of a definite class, as "the Portuguese Jews." (Rex v. Osborn, 2 Barnard. 166; Id. 138.) And where a libel reflects upon one of a certain body, ex. gr. one of the directors of the East India Company, but does not specify which of them, and the tendency of the libel is to create distrust and suspicion of the Company generally, the court will grant an information at their instance. Rex v. Jenour, 7 Mod. 400.) In such cases no affidavit need be made denying the truth of the imputations. (Rex v. Williams, 5 B. & A. 595.)

An information lies for libellous aspersions on the chief justice and other judges of one of the superior courts, (3 Chit. Crim. L. 878; 4 Went. Prec. 414;) or upon a judge and jury who tried a cause, (Arch. Pl. & Ev. C. C. 582, 8th ed.,) or who acquitted a man tried at the Old Bailey for murder, (Rex v. White, 1 Camp. 359: and see Rex v. Watson, 2 T. R. 199; Reg. v. Lawson, 1 Gale & D. 15; 1 Q. B. 486;) but, as such libels tend to weaken the administration of public justice, they are usually prosecuted by the attorney-general ex officio. An information will be granted for a libel on a peer or member of the House of Commons, with reference to anything [ \*17 ] said or done by him in \*Parliament, and in such cases no affidavit denying the truth of the imputation is necessary. (Rex v. Haswell and Bate, on the prosecution of the Duke of Richmond, 1 Doug. 387.) So, informations will be granted for libels on magistrates, or other public officers, with reference to anything done by them in the exercise of their duties. In H. T. 15 Geo. 3, such an information was granted against R. Holloway and G. Allen for printing and publishing a libel upon the justices of the peace of the county of Middlesex, usually sitting by rotation in Lichfield-street, in a pamphlet intitled *The Rat Trap*, charging them with ignorance and corruption in the execution of their office. (S. C. cited 5 B. & A. 596.) In H. T. 28 Geo. 2, 1755, a similar information was granted against A. Alderton, for writing and publishing a libel on the justices of the peace for the county of Suffolk, in an advertisement respecting the expenditure of money in the hands of the county treasurer. (S. C. cited 5 B. & A. 596.) So, for publishing a libel against three justices of the peace and the churchwardens and overseers of a parish, accusing them of having been guilty of fraud concerning the poor's rates. (3 Chit. Crim. L. 898; 4 Went. Prec. 407.) So, where the defendant published a libel of an alderman and justice of the peace, stating that he was "scandalously guilty of telling a lie in divers companies;" the court, considering that such libel was calculated to provoke a breach of the peace, granted an information; and Page, J., said, "An information ought the rather to go in this case because no action lies." (Rex v. Staples; Andr. 228.) But the court will not grant a criminal information for calling a magistrate a liar, accusing him of misconduct in reference to his having absented himself from an election of clerk to the magistrates, and threatening a repetition of the same language whenever such magistrate came into the town, unless there appear an intention to provoke a breach of the peace. (Ex parte Chapman, Esq., 4 Ad. & Ell. 773.) There Lord Denman, C. J., said, "I think it would not be proper to grant

this rule. I do not see my way clearly enough to treat \*this as a misdemeanor. I recollect a case where a rule was granted for [\*18] words spoken against a magistrate, which was afterwards discharged, because they appeared to be spoken with reference, not to his conduct as a magistrate, but to his voting as an elector to some office. In the present case, I at first thought the tendency of the words had been to provoke a breach of the peace." (And see *Rex v. Pocock*, 2 Stra. 1157; *Rex v. Weltje*, 2 Camp. 142.) The distinction seems to be between *libel* and *slander*, the former being always considered as tending to a breach of the peace. An information was granted for these words *in a letter* to the Mayor of Richmond, viz. "I am sure you will not be persuaded from doing justice by any little arts of your town clerk, whose consummate malice and wickedness against me and my family will make him do anything, be it ever so vile." (*Rex v. Waite*, 1 Wils. 22.)

The court will grant a criminal information for publishing in a newspaper a statement of the evidence given before a coroner's jury, accompanied with comments, although the statement be correct, and the party has not malicious motives in the publication. (*Rex v. Fleet*, 1 B. & A. 379.) For it is libellous, and punishable by indictment or information, to publish *preliminary examinations taken ex parte* before a magistrate or other officer; it tends to create a prejudice against the accused, and to deprive him of a fair trial. (*Rex v. Fisher and Others*, 2 Camp. 563; *Rex v. Lee and Another*, 5 Esp. 123; 3 Chit. Crim. L. 911.)

Informations for seditious, blasphemous and obscene libels are usually filed by the attorney-general *ex officio*, (ante 11, 12;) and it would seem, that if the government do not think fit to prosecute in such cases, the court would not give leave to file an information at the instance of a private prosecutor. More harm than good frequently results from prosecutions for such offences, which necessarily draw public attention to the libels in question.

The court will, however, grant leave to file criminal informations for gross libels on *private individuals*, where the imputations are of a serious nature, and totally unfounded. \*But the application must be made promptly; and, generally speaking, the party libelled must expressly [\*19] swear to his entire innocence of whatever is imputed, or even insinuated in the libel. (See post, ch. iv. s. 3.) He is thus enabled, in the first instance, effectually to clear his character in a court of justice, which is the principal advantage of this mode of proceeding. On the other hand, no injustice is done to the defendant, for, under such circumstances, he deserves to be severely punished by fine and imprisonment, at the discretion of the court. And it is now a settled rule, that when a party applies for an information, he is understood to waive his right to bring an action, unless the court should, on hearing of the whole matter, be of opinion that it is a proper subject to be tried in a civil action, and should specifically give him leave to do so. (*Rex v. Sparrow*, 2 T. R. 198; *Rex v. Fielding*, 2 Burr. 719; *Rex v. O'Gorman Mahon*, 4 Ad. & Ell. 575.)

The court will not entertain an application for a criminal information for a libel where no imputations of a serious nature are made individually on the person applying for the information; and, if the ground of application

be light or trivial, they will leave him to his remedy by action or indictment (Reg. v. Mead, M. T. 1840, Patteson, J. ; 4 Jurist, 1014, S. C.)

The court have, in the following instances, granted criminal informations for libels on private individuals, viz. For a letter to a nobleman, threatening to accuse him of unnatural practices unless he gave the defendant money, and conveyed to him a house, &c., (Rex v. Dennison, Lofft, 148 ; ) for a libel accusing the prosecutor of having been concerned in a monopoly in the East Indies, which produced a famine, and occasioned the death of thirty thousand people, (Rex v. Miles, Doug. 284 ; ) for a libel on Messrs. Goldsmid, charging them with having exported gold to Holland whilst under the government of the French and at war with this country, and discounting foreign bills for that purpose, (Rex v. Murphy, 6 Went. Prec. 449 ; ) [ \*20 ] for a libel on a barrister, relative to his conduct of a cause, \*(3 Chit. Crim. L. 684 ; ) for a ludicrous paragraph in a newspaper, giving an account of the marriage of an Irish Peer (a married man) with an actress, and appearing with her in the boxes, with jewels, &c., (Rex v. Kinnersley, 1 W. Blac. 294 ; ) for singing before the door of Daniel Cook, a grocer at Cheltenham, two libellous songs reflecting on the honesty and virtue of his son and daughter, with intent to discredit him and his children, and to disturb their domestic peace and comfort. (Rex v. Benfield, 2 Burr. 980.) Where a gross libel was published on a nobleman *and his family*, the court granted a criminal information on behalf of the latter, although the nobleman joined in the application, and made an affidavit in support of it, but was not free from blame: so that the court would not have listened to an application at his instance only. (Reg. v. Gregory, 8 Ad. & Ell. 907 ; 1 Per. & D. 110, S. C.)

The following are further recent instances in which the court have granted criminal informations for libels on private individuals :—

Rex v. Epps, (H. T. 1831), was an application for a criminal information on behalf of the Reverend Dr. Knatchbull, against the churchwardens of his parish, for a publication in which the clergy in general, and the doctor in particular, were charged with harshness and rigour in the exaction of their tithes. The rule to shew cause was granted. In Trinity Term following the defendant produced affidavits to shew that the composition for tithes demanded in his parish was exorbitant. But Lord Tenterden said, it appeared that the tithe-payers had paid their compositions without complaint until the late excitement had arisen. The rule ought to be made absolute at any time, but more particularly at this time, when so much excitement prevailed on the subject.

Rex. v. Kintoul and others, (H. T. 1831,) was an application by the Duke of Beaufort for a paragraph in the Spectator newspaper. The words complained of were as follow: "Who forgets the history of the late Duke of

[ \*21 ] \*Beaufort's will, which may be seen at Doctors' Commons on payment of one shilling, and which charges the estates of the present duke with annuities to his brothers, until they shall be better provided for by government. The amount of public money received by the Somerset, since the late Duke of Beaufort came of age, far exceeds the value of the estates he bequeathed to the present duke." The duke's affidavit denied that he or any of his family held any sinecure place or pension, and affirmed

that all the public money received by the Somersets since the late duke came of age did not amount to one year's value of his estates. A rule to shew cause was granted, and subsequently, in Trinity Term, the attorney-general contended, for the defendants, that the publication in question was no libel. The argument on both sides ran to a great length; but Lord Tenterden, said, at the conclusion, that it was not for them to consider what might or might not be the opinion of any other tribunal. They must proceed as they themselves and their predecessors had done; and, whatever was the opinion of others, it was their opinion that it was a libel. Rule absolute accordingly.

*Rex. v. Smith*, (M. T. 1831).—A rule to show cause why a criminal information should not be granted had been obtained against the defendant, for publishing advertisements tending to excite riot and a breach of the peace, among the people of Oxmoor township. It appeared that Smith, a wine-merchant of Oxford, unconnected with the Oxmoor rioters, had, after their conviction, published an advertisement in the paper, recommending a subscription for them, and putting queries respecting the inclosure; such as, whether a large number of acres had been given to Sir Alexander Croke, with thirty-one in lieu of tithes, and whether the Oxmoor common before had not been tithe-free. The Crokes swore, that if these queries were meant for assertions they distinctly denied the truth of them. Sir Alexander had also published a pamphlet with this statement of the matters in dispute. Smith, in his affidavit, stated that he believed these proceedings arose from his \*support of the reform candidate in the Oxford county election. Rule absolute. [\*22]

*Rex v. Clouter*, (M. T. 1831), was an application on behalf of the Bishop of Exeter, relating to some proceedings with regard to a burying-ground in the parish of Stoke Damerel, for the conveyance of which to the parishioners the bishop's consent was required by act of Parliament. On two opinions of Dr. Lushington the bishop declined interfering. The person employed by the parish submitted a third case to Dr. Lushington, which the bishop refused to peruse, saying, "I will not look at an opinion founded on a state of facts not previously submitted to me for consideration." At a vestry meeting in Stoke Damerel, afterwards, it was resolved, "That the meeting could not but regret that the Bishop of Exeter should so far have forgotten himself as to deny the parishioners that justice which they had a right to demand at his hands, viz., his sanction to a deed of conveyance. The parishioners could not reprobate such conduct in language too strong. Resolved further, that the utmost censure be conveyed to the bishop for such his dishonourable and degrading conduct." This, being signed by the churchwarden (Clouter) as chairman, was afterwards printed and published. On this statement a rule to show cause was granted, and, in Hilary Term following, affidavits were produced to show that Dr. Lushington had never advised the bishop not to sign the deed, and, on the third application, had distinctly advised it; and further, that the bishop's consent was only rendered necessary by the loss of a deed, which, in 1811, conveyed the burial-ground to the parishioners. Rule absolute.

*Rex v. Sober*, (H. T. 1832), was an application on behalf of Mr. Law, a surgeon, against the proprietor of the Devonport Telegraph, for the following—  
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ing paragraph :—"Tria juncta in uno. This saying was nearly verified by a woman offering to parish officers to swear her child to one of three parties, a surgeon, a farmer, or a labourer." There were affidavits that Law was the person alluded to ; that he had attended A. H., and hearing that [ \*23 ] she was going to swear a \*child to him, had taken steps to rebut the charge. A rule to show cause was granted.

*Rex v. Smart*, (E. T. 1832.) Dr. Grey, the rector of St. Botolph's, Bishopsgate, applied for a criminal information against the vestry-clerk of the parish, on account of a placard bearing his signature, which contained a resolution of the vestry, that the rector had retained money to which he was not justly entitled. His attorney went to the defendant with the placard. Smart expressed his surprise that Dr. Grey should retain money to which he was not equitably though legally entitled. The attorney told him that if he would not give up the parties at the bottom of it, he would be held legally responsible. He refused. A rule to show cause was granted.

*Rex v. Brigstock*, (M. T. 1832), was an application on behalf of Mr. Phillips, mayor of the borough of Carmarthen, against the printer and publisher of the Carmarthen newspaper for a libel, which stated, that, after his election, he was dining with his friends at an inn and indulging in intemperate revelry during a riot that took place in the town, and, satisfied with having gained this point, instead of taking means to stop the disturbance, treated with insult those who applied to him for the purpose. His affidavit stated that he had taken all proper means to put down the riot, and there were several affidavits to his sobriety at the time. A rule to show cause having been obtained, the solicitor-general, in Hilary Term, 1833, contended that it was not a case for the extraordinary interference of the court, Brigstock's affidavits showing the neglect and refusal of the magistrates to stop the tumult. But the rule was made absolute.(a)

2. *Against Magistrates.*—A magistrate is entitled in all cases to six [ \*24 ] days' notice of an intention to apply for a criminal \*information against him. And it is not sufficient that, in point of fact, six days have expired between the notice and the motion, if the notice contemplate an earlier application. (Ex parte Fentiman, 4 N. & M. 126 ; 2 Ad. & Ell. 127, S. C. : and see *Bolton v. Allen*, 1 Dowl. N. S. 309.) Therefore, a notice served on 31st October of an intention to apply on the first day of Michaelmas Term, or so soon after as counsel could be heard, was held insufficient to support an application made on the 13th of November. (Ex parte Fentiman, supra). A magistrate is entitled to notice before an application is made for a criminal information, where he is charged with misconduct in his magisterial capacity, *although other misconduct is also charged*. (*Rex v. Heming*, 2 N. & M. 477 ; 5 B. & Adol. 666). There Lord Denman, C. J., said, "It is an established rule of practice, that no application for a criminal information can be made against a magistrate for any thing done in the course of his office without previous notice. It is true that, in this case, some acts attributed to the defendant are such as any individual,

(a) For the statement of this and the six preceding cases the author is indebted to a very able article on Criminal Informations in the *Law Magazine*, Vol. 9, p. 361.



not a magistrate, might be indicted for. Whether we should have granted a criminal information for such acts alone might be doubtful. As some of the acts stated in the affidavits do affect this defendant in the character of a magistrate, the case falls within the general rule, which requires notice. The rule for a criminal information must be discharged."

The notice may be served personally, or by leaving a copy at the magistrate's place of residence, with his wife, or some member of his family, or his servant. Notices in general do not require personal service. (Per Lord Kenyon, C. J., and Buller, J., in *Jones dem. Griffiths v. Marsh*, 4 T. R. 465.) The object of the notice is, of course, to give the magistrate an opportunity of showing cause against the application in the first instance, if he thinks fit. Upon moving for the rule nisi, there must (inter alia) be an affidavit of due service of the requisite notice. (1 Gude, 115). For form of notice, see Appendix A., Nos. 1 & 2; form of affidavit of service, Id. No. 3. As to the time \*within which the application must be made, [\*25] see post, Ch. IV. s. 1, p. 42.

If an action or other legal proceeding be depending against the magistrate, in respect of his alleged misconduct, it must be waived or abandoned before the court will call upon him to shew cause why a criminal information should not be exhibited against him. (*Rex v. Sparrow and Another*, 2 T. R. 198; *Rex v. Fielding*, 2 Burr. 719; 2 Lord Ken. 386, S. C.; *Rex v. Phillips and Others*, Rep. temp. Hardw. 241.) Indeed, it is now established as a general rule, that when a person applies for an information he is understood to waive his right to bring an action, unless the court should, on hearing the whole matter, be of opinion that it is a proper subject to be tried in a civil action, and should specifically give him leave to do so. (Per Ashhurst, J., in *Rex v. Sparrow*, supra.)

To warrant an application for a criminal information against a magistrate, it must be clearly shown by affidavit, that he has acted illegally, (*Rex v. Barker*, 1 East, 186; *Rex v. Jackson*, Loft, 147;) not from mere mistake or error of judgment, but *from an unjust, oppressive, or corrupt motive, amongst which fear and favour are generally included*. To support an indictment, it is sufficient to show that a magistrate has acted illegally. "What the law says shall not be done, it becomes illegal to do, and is, therefore, the subject-matter of an *indictment*, without the addition of any corrupt motives. And though the want of corruption may be an answer to an application for an information which is made to the extraordinary jurisdiction of the court, yet it is no answer to an indictment, where the judges are bound by the strict rule of law." (Per Ashhurst, J., in *Rex v. Sainsbury*, 4 T. R. 457.) But whenever magistrates act honestly and uprightly, though they mistake the law, no information will be granted against them. (*Rex v. Jackson and Another*, 1 T. R. 653; *Rex v. The Justices of Staffordshire*, 1 Chit. R. 217; Id. 218, note.) Therefore, where a criminal information is applied for against a magistrate, the question for the court is not whether the act \*done be found, on investigation, to be strictly [\*26] right or not, but whether it proceeded from an unjust, oppressive, or corrupt motive, (amongst which fear and favour are generally included,) or from mistake or error only: in the latter case, they will not grant the rule. (*Rex v. Borron*, Esq., 3 B. & A. 432; and per Patteson, J., in *Ex parte Fentiman*, 2 Ad. & Ell. 127; 4 N. & M. 126, S. C.). "To punish,

as a criminal, any person who, in the gratuitous exercise of a public trust, may have fallen into error or mistake, belongs only to the despotic ruler of an enslaved people, and is wholly abhorrent from the jurisprudence of this kingdom." (Per Abbott, C. J., in *Rex v. Borron*, supra.) An error in the proceedings before magistrates, is no ground for a criminal information. The court will not interfere against them, unless they have acted corruptly. (*Rex v. The Justices of Staffordshire*, 1 Chit. R. 217.) The court will not grant a rule nisi for a criminal information against justices on the following grounds only : viz. That they held a party to bail, for perjury, without any legal information or evidence ; and that they, without legal evidence, or any opportunity given him to defend himself, bound him over to the sessions, which had no jurisdiction, to answer such charge, not binding over any prosecutor ; that their conduct was, in some respects, irregular ; and that the party applying believes them to have acted in collusion with persons whom he had intended prosecuting, to deter him from such prosecution. *More distinct evidence is requisite, that the justices acted from corrupt motives.* (Ex parte Fentiman, 2 Ad. & Ell. 127 ; 4 N. & M. 126, S. C. ; and see *Rex v. Fielding*, 2 Burr. 719.) However *illegally* magistrates may have acted in their official capacity, the court will not, from that only, infer that they so acted from corrupt motives, especially if corrupt motives are not expressly imputed to them in the affidavits. (*Rex v. Jackson and Another*, 1 T. R. 653.)

Where, however, it is sufficiently shown, by affidavit, that a magistrate has acted illegally, from a corrupt or improper motive, or where he has, in [ \*27 ] fact, abused the powers \*entrusted to him, from motives of resentment or fear or favour, or to suit a political purpose, or the like, a criminal information will be granted against him. Thus, where justices of the peace refuse to grant licenses to sell ale to innkeepers or publicans, merely from motives of resentment, for having acted or voted against their political interests at an election. (*Rex v. Williams*, and *Rex v. Davies*, 3 Burr. 1317 : *Rex v. Hann and Another*, 3 Burr. 1716 ; Id. 1786.) In the last-mentioned case the defendants denied, by affidavit, that they acted from resentment or other corrupt motive ; but the court were not satisfied on that point, and made the rule absolute. The defendants afterwards pleaded guilty to the information, whereupon the court sentenced them each to one month's imprisonment, and a fine of 50*l*. See form of indictment against justices for partiality in refusing a license, 4 Went. Prec. 364 ; 2 Chit. Crim. L. 253. In other similar cases, where the court have been satisfied that the defendants did not act from the corrupt motives imputed to them by the prosecutor, the rule has been discharged. (*Rex v. Bayles and Another*, 3 Burr. 1318 : *Rex v. Young and Another*, 1 Burr. 556 ; *Rex v. Athay*, 2 Burr. 653.) An information will be granted against a justice of the peace, as well *for granting* as for refusing an ale license improperly. Thus, where a justice was present at a general meeting of justices, at which a license was refused to one Harrison for misconduct, and such justice afterwards prevailed upon another justice, who was not present at such general meeting, to concur with him in granting a license to Harrison, saying, that the only reason why a license had not been granted then was, that they might have an opportunity of inquiring into the character of Harrison ; the court made a rule absolute for a criminal information against the justice who

had so improperly acted, but discharged it as to the justice who had been deceived, but was not altogether blameless, upon his paying the costs of the application as against himself. *Rex v. Holland and Forster*, 1 T. R. 692; and see 2 Chit. Crim. L. 249: *Rex v. Filewood*, 2 T. R. 145; \**Rex v. Sainsbury*, 4 T. R. 451.) Where magistrates granted a distress [\*28] for poor rates against the occupier of a house, after the agent *for the landlord* had expressly tendered the amount to the overseers, in the presence of the magistrates; and it was sworn by the affidavits, on the part of the prosecution, that they had so acted (according to the belief of the prosecutor) from corrupt and criminal motives, and to serve election purposes; and this was positively denied by the defendant, but their affidavits did not go on to state their reasons for granting the warrant: the court held, that the justices could not excuse themselves on the ground of ignorance, and that they must have acted with a view to make a point to serve the purposes of an election. But the court permitted the rule to be discharged upon the defendants undertaking to pay the whole costs out of pocket, incurred by the application. (*Rex v. Cozens and Another*, Dougl. R. 410.)

Where a magistrate grossly abuses his authority, in convicting a person improperly for killing a hare, a criminal information will be granted against him, provided the prosecutor swear to his entire innocence of the offence, but not otherwise. (*Rex v. Webster*, 3 T. R. 388.) The court will not hear a motion against a justice for convicting *without summons* until the conviction is removed before them. (*Rex v. Heber*, 2 Stra. 915.) And if it appear, by affidavit, that although the defendant was not regularly summoned, yet the justice *sent for him*, and he actually appeared and applied for mercy, the rule will be discharged with costs. (*Rex v. Athay*, 2 Burr. 653.) An information will be granted against a justice for causing a person to be imprisoned for want of bail, in a matter not cognizable before him, and ordering him to be kept in close confinement, without pen, ink, or paper, or the sight of any friend. (2 Chit. Crim. L. 238; Cro. C. C. 272; Arch. Pl. & Ev. C. C. 576, 8th ed.) So, for causing a young woman to be publicly whipped, as a disorderly person, without any view, information, or proof exhibited against her. (2 Chit. Crim. L. 236; Cro. C. C. 274.) So, where a justice of the \*peace knowingly took insufficient sureties for the appearance of a person charged with seducing [\*29] manufacturers into foreign parts, and that without notice to the committing justice. (4 Went. Prec. 418.) So, where three justices had illegally bailed a person committed in execution by another justice as a vagrant, and had superseded a warrant against another person on a similar charge, without hearing the information or examining any witnesses; and it appeared that two of them had not acted *bonâ fide*, but had made themselves parties to the business, the court made absolute a rule for a criminal information against them, but discharged the rule as to the third justice who had not originally interfered, but had only adopted the opinion of the other two defendants upon the construction of the Vagrant Act. (*Rex v. Brooke and Others*, 2 T. R. 190; 2 Chit. Crim. L. 239; 4 Went. Prec. 424.) In that case the court were of opinion that there was gross misbehaviour in the defendants, which could not be imputed to mistake or ignorance of law; and, therefore, that they had acted not only illegally but corruptly. And per Ashhurst, J., "Though they have denied generally that they acted

from any interested motives in this business, yet that is not sufficient ; for if they acted *even from passion or opposition, that is equally corrupt* as if they acted from pecuniary considerations." (2 T. R. 195.)

If justices of the peace *wilfully refuse to perform their duty*, the court will grant a criminal information against them. (Rex v. Fox, 1 Stra. 21 ; Rex v. Newton, 1 Stra. 413.) Where two magistrates unlawfully refused to accept certain persons as bail for one O'Neil, upon a charge of sedition, &c., solely because the proposed bail were chartist leaders, although they were town councillors at Birmingham, and unquestionably persons of sufficient property, as the magistrates well knew ; Mr. Justice Patteson (after taking time to consider) granted a rule nisi for a criminal information against them : on cause being shewn against the rule, it appeared by affidavit that the magistrates did not act from any corrupt or oppressive motive, [\*30] but in pursuance of a previous general resolution made at a meeting of the magistrates of the county, with the sanction of the lord-lieutenant ; the court, therefore, discharged the rule, but as the magistrates had acted illegally they were ordered to pay the costs of the application. (Reg. v. Badger and Cartwright, H. T. 1843.)

Where a justice is guilty of an *extortion*, under colour of his office, a criminal information will be granted against him. (Rex v. Yea, Bart., 1 Gude, 111, note (a) ; Rex v. Jones, 1 Wils. 7.) So where a justice takes upon himself to adjudicate upon a matter in which he had a direct pecuniary interest. (Rex v. Davis, Lofft. 62.) And in such a case, although he may not have acted illegally, yet if his proceedings have been irregular, and not such as the court approve of, they will not give the magistrate his costs, although they feel themselves bound to discharge the rule upon the merits. (Rex v. Whately, clerk, 4 Man. & Ry. 431.)

An information will be granted against magistrates for making a false return to a mandamus. (Rex v. Spotland, Cases temp. Hardw. 184.) But not where the truth of the return depends upon a matter of doubtful law. (Rex v. Petteward, 4 Burr. 2452.) And, indeed, it seems doubtful whether an information will now be granted, unless the return be corruptly and wilfully false. (Rex v. The Justices of Lancashire, 1 D. & R. 485.) A criminal information was refused against a magistrate for returning to a writ of certiorari a conviction of a party, in another and more formal shape than that in which it was first drawn up, and of which a copy had been delivered to the party convicted, by the magistrate's clerk, the conviction returned being warranted by the facts. (Rex v. Barker, 1 East, 186.) A criminal information will be granted against justices for an improper and illegal appointment of overseers, if the corrupt and improper motives for making the appointment be satisfactorily established. (Rex v. The Justices of Somersetshire, 1 D. & R. 443 ; and see Rex v. Jolliffe, cited 1 East, 154.)

It is very seldom that a criminal information will be [\*31] granted against justices for any thing done *in session*, for there they constitute a court of record ; and, therefore, very flagrant proof must be adduced of their having acted from corrupt motives. (Rex v. The Justices of Seaford, 1 W. Blac. 432 : Rex v. The Justices of Shrewsbury, 2 Barnard. 272 : Rex v. Davie & Others, Doug. 567.) But if the court, upon full consideration of the affidavits on both sides, be satisfied that the justices acted from political or party motives, they will make the rule absolute

against them, although the justices, in answer to the charge, swear that they were not influenced by party motives, but thought that the applicants were improper objects on account of their poverty. (*Rex v. Phelps and Others*, 2 Lord Ken. 570.)

3. *For Bribery.*—A criminal information will be granted for bribery, or an attempt to bribe, at an election of *municipal officers*. Thus, at an election of mayor. (*Rex v. Plympton*, 2 Lord Raym. 1377; where see the *form* of such information: *Rex v. The Mayor of Tiverton*, 8 Mod. 186.) So, at an election of aldermen. (*Rex v. Steward and others*, 2 B. & Adol. 12: *Rex v. Robinson*, 1 W. Blac. 541: *Rex v. Spinage*, cited 1 W. Blac. 383.) So, for bribing, or attempting to bribe, a Burgess to vote, or to abstain from voting at a *parliamentary* election. See the form of an ex officio information for such offence, Appendix A., No. 13. "Any way to obstruct the freedom of elections, whether by bribery to vote, or to forbear to vote, is a very heinous offence, and proper for the animadversion of this court by information." (Per Lord Mansfield, C. J., in *Rex v. Isherwood*, 2 Lord Ken. 202: *Rex v. Taylor*, 12 Mod. 314.) But as a person guilty of bribery at a *parliamentary* election is liable, under 2 Geo. 2, c. 24, to be sued for 500*l.* penalty, at any time within two years after the offence committed, the court will not listen to an application for a criminal information for such offence until after the two years have expired. (*Rex v. Pitt & Mead*, 1 W. Blac. 380; 3 Burr. 1335, S. C.; *Coombe v. Pitt*, 3 Burr. 1586; *Rex v. Robinson*, 1 W. Blac. 541.)

\*In *Rex v. Vaughan*, (4 Burr. 2494), an information was granted [ \*32 ] at the instance of the Duke of Grafton, first lord of the Treasury, and a privy councillor, for an offer to bribe him with 5000*l.* to procure a patent for the reversion of an office of trust in Jamaica. See the form of such information, 3 Chit. Crim. L. 683; Cro. C. C. 502. In the above case, Lord Mansfield C. J., said, "wherever it is a crime to *take*, it is a crime to *give*. They are reciprocal. And in many cases, especially in bribery at elections to Parliament, *the attempt* is a crime. It is complete on his side who offers it. If a party offers a bribe to a judge, meaning to corrupt him in a case depending before him, and the judge taketh it not; yet this is an offence punishable by law in the party that offers it. (3 Inst. 147.) So, also, a promise of money to a corporator to vote for a mayor of a corporation; as in *Rex v. Plympton*, (2 Lord Raym. 1377.) And so also must an offer to bribe a privy councillor to advise the king." (4 Burr. 2500, S. C.) The mere soliciting another to commit an offence is clearly a misdemeanor: it is *an act done*. *Rex v. Higgins*, 2 East, 5; and see *Henslow v. Fawcett*, 3 Ad. & Ell. 51.) An information will be granted for attempting to influence a jurymen in giving his verdict, by offering him a bribe. (*Rex v. Young*, cited 2 East 14; *Id.* 16.) And it may perhaps be laid down generally, that a criminal information for bribery will be granted in any case in which an indictment could be supported, unless there be some special reason to the contrary.

As to the evidence in bribery cases, see *Coombe v. Pitt*, 3 Burr. 1586; *Henslow v. Fawcett*, 3 Ad. & Ell. 51; *Webb v. Smith*, 4 Bing. N. C. 373.

4. *For Offences against Public Justice.*]—Where a person attempts, by undue and improper means, to stifle or pervert public justice, or to bring the administration of it into disrepute and suspicion, by gross invective or animadversion, the court will grant a criminal information against him. Thus; if a person compound a felony, or even a qui tam action, without leave of the the court, he may be punished by an indictment or a criminal information. (2 [ \*33 ] Chit. Crim. L. 223; Cro. C. C. 137: \*Arch. Pl. & Ev. C. C. 579, 8th ed.) Where a defendant in a criminal information, a few days before the commission-day, distributed handbills in the assize town, vindicating his own conduct, and reflecting on that of the prosecutor, the court considering the hand-bills to have been distributed by the defendant *for the purpose of influencing the jury in his favour*, granted another criminal information against him. (Rex v. Jolliffe, 4 T. R. 285.) In Rex v. Phillips, (3 Burr. 1564,) the attorney-general, on behalf of the Crown, moved for an information for a most gross misdemeanor, in attempting to influence the jury returned to try Mr. Wilkes's cause, by sending them several pamphlets and inflammatory papers, and actually preventing two of the special jurors from appearing, by sending an express to them, in the middle of the night preceding the day of trial, with a fictitious letter (signed "summoning bailiff,") acquainting them that the trial was put off, which was contrary to the fact. The court refused to grant *leave* to file the information, because the attorney-general might file it *ex officio*. An information will be granted for perjury, or an attempt to suborn witnesses, (23 Geo. 2, c. 11, ss. 1, 2; Rex v. Phillips and Others, Cases temp. Hardwicke, 241,) unless the question put was an unfair one as tending to criminate himself. (Rex v. Dummer, 1 Salk. 374.) So, for attempting to induce witnesses to keep out of the way, to avoid giving evidence on a prosecution. (Rex v. Lady Lawley, 2 Stra. 904; Barnard. 263, S. C.) So, for attempting to influence a jurymen in giving his verdict, by offering him a bribe. Rex v. Young, cited 2 East, 14; Id. 16.) So, for a conspiracy in the nature of embracery to procure a false verdict, one of the defendants getting himself sworn as a talesman on the jury. (Rex v. Opie and Others, 1 Saund. 300 b.; Cro. C. C. 153.) An information will lie for libellous aspersions on the chief justice, and other judges, of one of the superior courts, (4 Went. Prec. 414; 3 Chit. Crim. L. 878;) or upon the judge and jury who tried a cause, (Arch. Pl. & Ev. C. C. 582, 8th ed. ;) or who acquitted a man tried at the Old [ \*34 ] Bailey for murder. (Rex v. White, 1 Camp. 359.) Where a corporation, by an entry in their own books, reflect upon the administration of public justice, the court will grant a criminal information against the members who joined in such resolution. (Rex v. Watson and Others, 2 T. R. 199.) "Nothing can be of greater importance to the welfare of the public, than to put a stop to the animadversions and censures which are so frequently made on courts of justice in this country. They can be of no service, and may be attended with the most mischievous consequences. Cases may happen in which the judge and the jury may be mistaken; when they are, the law has afforded a remedy; and the party injured is entitled to pursue every method which the law allows to correct the mistake. But when a person has recourse, either by a writing like the present, by publication in print, or by any other means, to calumniate the proceedings of a court of justice, the obvious tendency of it is to weaken the admin-

istration of justice, and in consequence to sap the very foundation of the constitution itself." (Per Buller, J., 2 T. R. 205, S. C.) Upon similar grounds, it appears that a criminal information will be granted for publishing of a person that he was guilty of an offence of which he had been tried and acquitted, unless, indeed, the alleged libel be contained in a report published by order of the House of Commons. (*Rex v. Wright*, 8 T. R. 293.)

The court will grant a criminal information for publishing the *preliminary* examinations taken before a coroner or magistrate, because, such publication tends to create a prejudice against the accused, and to deprive him of a fair trial. (*Ante*, 18.)

An information was granted for unlawfully refusing the office of sheriff, because the vacancy of such office occasioned a stop of public justice, and the year would be nearly expired before an indictment could be brought to trial. (*Rex v. Woodrow*, 2 T. R. 731: *Rex v. Shacklington*, a Quaker, Andr. 201, note.) But it was refused where the defendant was a dissenter; and it was then doubtful whether he was liable to any other punishment than a penalty \*for refusing to accept the office. *Rex v. Grosvenor*, [\*35] 1 Wils. 18; 2 Stra. 1193, S. C.) So it was refused against a person who had been elected mayor of Leeds for not taking upon himself that office, it appearing that he might be fined, and had not *obstinately refused* to take upon himself the office after proper notice of his election, and did not usually reside in the borough. (*Rex v. Denison*, 2 Ld. Ken. 259.)

An information has been granted against the captain of a ship of war, in Portsmouth harbour, for unlawfully preventing the coroner from holding an inquest on board of the ship. (*Rex v. Solgard*, 2 Stra. 1097.) But an information was refused against a jurymen on a coroner's inquest, who refused to be sworn until the jury should be satisfied as to the propriety of holding the inquest; it appearing that he acted bona fide, on a conviction that he was right in such refusal. (*Reg. v. Blurton*, M. T. 1837, Littledale, J.; 2 Jurist, 33, S. C.; and see *Rex v. Parkyns*, 3 B. & A. 668.)

Where a false return is made to a writ of mandamus, and the parties concerned can neither traverse it, nor bring an action, the court will grant a criminal information for such false return. (*Rex v. Overseers of Spottland*, Cases temp. Hardwicke, 184: Case of the Surgeons' Company, 1 Salk. 374.) But where the defendants are magistrates, see *Rex v. Pettward*, 4 Burr. 2452: *Rex v. the Justices of Lancashire*, 1 D. & R. 485, ante, 30.

A criminal information has been granted against commissioners, under a turnpike act, who exceeded their powers in a case where there was no other remedy. (*Rex v. Rogers, Bart.*, 2 Ld. Ken. 373.)

We have already considered in what cases a criminal information will, or will not, be granted against justices of the peace for abusing their powers, and perverting the course of justice from corrupt or improper motives. (*Ante*, 25 to 30.)

5. *For Offences against the Public Peace.*—The court \*will grant a criminal information for gross and notorious riots, affrays, [\*36]

batteries, assaults, challenges to fight, endeavours to provoke a challenge, and other misconduct, evidently tending to a breach of the peace; provided the party making the application apply promptly, and be free from blame with reference to the transaction complained of, and have not adopted any other legal remedy. Thus, the court granted a criminal information, at the instance of the lord of a manor, against seventy persons, for assembling together, and in a riotous manner pulling down fences, &c. (*Prynn's Case*, 5 Mod. 459; S. C. nom. *Rex v. Berchet and Others*, 1 Shower, 106.) So, a criminal information will be granted for a serious riot, attacking the constables and magistrates, unless, indeed, it appear that the defendants fall within the penalty of the Riot Act. (*Anon.*, Loffi, 253; *Rex v. Hunt and Others*, 1 Ld. Ken. 108.) So, for a riotous assembly, with cutlasses, &c., breaking into a room, part of a warehouse, making a noise therein, and assaulting divers persons there, and beating and wounding them, and breaking to pieces the furniture, &c. (2 Chit. Crim. L. 502.) So, for obstructing an election in a violent and tumultuous manner. (*Rex v. Parkyns and Others*, 3 B. & A. 668; *Rex v. Hunt*, supra.) So, for an enormous battery, notwithstanding the facts are denied by the affidavits on the other side. (*Anon.*, 2 Barnard. 27.) So, for a grievous assault, provided the party injured have not so acted as to disqualify himself from making the application. (*Reg. v. Gwilt*, 11 Ad. & Ell. 589; 3 P. & D. 176; 8 Dowl. 476, S. C.; *Rex v. O'Gorman Mahon*, 4 Ad. & Ell. 575; *Ex parte* —, *Gent.*, one &c., 4 Ad. & Ell. 576, note.) The court refused an information for an assault on the mayor of Yarmouth, whilst in the execution of his office, the mayor having first struck the defendant. (*Rex v. Symonds*, *Cases temp. Hardwicke*, 240.) They have refused an information for assaulting Mr. Nox Ward, to force him to sign a paper which the defendant produced, but which Mr. Ward *refused to sign*. (*Anon.*, 2 Barnard. 87) The court granted an information for forcing one E. M. to marry one of the defendants [ \*37 ] \*against her will, although all the facts were totally denied. (*Rex v. Lynn*, 2 Barnard. 242.) So, for taking away a young lady out of the custody of her guardian assigned in chancery, and marrying her, although she went voluntarily, and the defendants had been committed by the Court of Chancery for the contempt. (*Rex v. Lord Ossulton and Others*, 2 Stra. 1107; S. C. nom. *Rex v. Pierson and Others*, Andr. 310; and see 3 Chit. Crim. L. 713.) So, for taking away a natural daughter under sixteen, under the care of her putative father. (*Rex v. Cornforth and Others*, 2 Stra. 1162.) So, for sending or delivering a challenge, (*Rex v. Morgan and Another*, Doug. 314; 3 Chit. Crim. L. 848 to 862; Appendix A., Nos. 15, 16,) provided the fact be brought home to the defendant by sufficient legal evidence, (*Rex v. Willett*, 6 T. R. 294; *Rex v. Younghusband*, 4 N. & M. 850;) but the court will refuse an information for a challenge, if the prosecutor appear to have misconducted himself; as by sending the first challenge, (*Rex v. Hankey*, 1 Burr. 316,) or by sending a challenge to a third person connected with the defendant. (*Rex v. Larriue*, 7 Ad. & Ell. 277.) The court discharged a rule nisi for a criminal information against an attorney, who had written a letter to the attorney of the opposite party in an action, stating, that he would horsewhip his client at the first opportunity, because of certain insulting pleas put in to the action—the letter containing passionate expressions, and purporting to be written *without*



*prejudice.* This the court considered too absurd and trifling to warrant an application for a criminal information. (Reg. v. Lane, 31st January, 1843, Q. B.) An information will be granted for provoking and endeavouring to procure another to send a challenge. (Ex parte Williams, 5 Jurist, 1133; Rex v. Phillips, 6 East, 464; Cro. C. C. 122.) So, for insulting a magistrate, and challenging him to fight. (6 Went. Prec. 461; 3 Chit. Crim. L. 850.) But the court will not grant a criminal information for calling a magistrate a liar, accusing him of misconduct in reference to his having absented himself from an election of clerk to the magistrates, \*and [ \*38 ] threatening a repetition of the same language whenever such [ \*38 ] magistrate came into the town, unless there appear an *intention to provoke a breach of the peace*. (Ex parte Chapman, 4 Ad. & Ell. 733; and see Rex v. Pocock, 2 Stra. 1157; Rex v. Weltje, 2 Camp. 142.) *Libels* are generally calculated to lead to a breach of the peace. We have treated of them separately. (Ante, 15.)

Where an affray takes place in disturbance of public justice, or at an election of members of Parliament, the court will grant an information; but not for an affray of a political nature, which takes place at a race-ground. (Rex v. Kynaston and Others, 2 Barnard. 378.) It will be granted for obstructing and disturbing divine service in a church, or in any dissenters' chapel. (Rex v. Wroughton and Others, 3 Burr. 1683; 2 Chit. Crim. L. 29.) But where churchwardens refused to let the parishioners meet in the church about public business, in pursuance of a notice given them for that purpose, the court thought that such offence was not great enough to require an information, and accordingly refused the motion. (Anon., 2 Barnard. 166.) An information will be granted for obstructing, in a violent and tumultuous manner, the election of lord mayor of London on the charter-day: but if the violence and tumult be satisfactorily denied, and the defendants appear to have acted under a bona fide belief that they were merely exercising a legal right, the rule will be discharged. (Rex v. Parkyns, 3 B. & A. 668.) An information has been granted for a riot and disturbance at the election of bailiffs and burgesses of a corporation, but judgment was arrested upon the pleadings. (Corporation of Bewdley's Case, Holt, R. 353.)

6. *For Offences against Public Trade.*—A criminal information will be granted for using any undue and improper means to *enhance the price in the market of any of the necessities of life*. Thus for a conspiracy to raise the price of salt, (Rex v. Norris and Others, 2 Lord Ken. 300; 3 Chit. Crim. L. 1164; Cro. C. C. 150;) or, of oil. (Rex v. Hilbers, 2 Chit. R. 163.) So, for spreading rumours (whether true \*or false) respecting [ \*39 ] hops, *with intent to raise the price* of the hops, then in the market; [ \*39 ] or, by persuading the dealers not to take their hops to market, and to abstain from selling for a long time; or by engrossing large quantities of hops, by buying from many persons with intent to re-sell the same for an unreasonable profit, and thereby to enhance the price in the market generally; or, for buying, or contracting to buy, large quantities with intent to prevent the same being brought to market, and to re-sell the same at an exorbitant profit, and thereby greatly enhance the price. (Rex v. Waddington, 1 East, 143; 2 Chit. Crim. L. 527.) “For the sake of the public,

and especially of the poorer part of his Majesty's subjects, the law pays particular respect to the necessities of life; the price of which a man is not permitted to enhance by undue means for his own private profit. In these, and other respects, the freedom of trade has its limits, and is, and must, like all our other liberties, be regulated by law." (Per Cur. 1 East, 164, S. C.) The court will therefore grant a criminal information for *forestalling, regrating, or engrossing*, wherever an indictment could be supported for these offences. As to which, see Arch. Pl. and Ev. C. C. 613, 8th ed.

It seems that an information will be granted for forcing a farmer, by menaces of riot and violence, to sell his cheese at 3d. per lb. (Tinte, or Chote v. Fawkes, Lofft, 64.)

An information has been granted for a conspiracy to ruin gun-makers in their trade, by making riots before their house and shop, seducing their workmen to leave their employ, making declarations of ill will towards them, threatening bodily injury to their agent, and attempting to do him bodily harm. (Rex v. Hadley and Others, 6 Went. Prec. 439.) So, for a conspiracy to ruin a player in his profession, by making a riot in Covent Garden Theatre, and preventing the performance of a play in which he was to act, and obliging the manager, against his will, to come on the stage and discharge him. (Rex v. Leigh and Others, 6 Went. 443; 2 Chit. Crim. L. 494.)

[\*40] Informations against traders and others, for violating or \*evading any of the provisions of the acts relating to the excise or customs, &c., or obstructing officers in the collection of the revenue, or in performance of their duties, are usually filed by the attorney-general ex officio; or they assume the form of *qui tam* informations for penalties; the latter are not often resorted to, as a *qui tam* action is in many respects the preferable mode of proceeding.

7. *In Other Cases.*—Formerly the court would grant criminal informations against overseers of a parish, for procuring a marriage between paupers, to change a settlement and so burthen another parish. (Rex v. Herbert, 2 Ld. Ken. 466; Rex v. Tarrant, 4 Burr. 2106.) So, for procuring one to marry an idiot chargeable to the parish. (Rex v. Watson, 1 Wils. 41.) So, for forcibly removing a poor woman, who was very sick, near her time, from one parish to another, to avoid the expense it might occasion to the first parish, if the child should be born there. (Rex v. Busby, 1 Bott, 344, pl. 377.) But the court have now resolved to refuse informations in all cases like these, and to leave the applicant to seek his remedy by indictment. (Rex v. Compton, Cald. 246; Id. 247, note; 2 Nolan, 477, 4th ed.; Arch. Pl. & Ev. C. C. 73, 8th ed.)

The court have granted a criminal information for endeavouring to procure the appointment of certain persons to be overseers of the poor, with a view to derive a private advantage to the party. (Rex v. Jolliffe, 1 East 154, note; Rex v. The Justices of Somersetshire, 1 D. & R. 443.)

Where a music-master, in consideration of a sum of money, assigned over his female apprentice to a gentleman, under pretence of her receiving lessons from him in music, but really for the purpose of prostitution, the court, upon application, granted a criminal information against the gentle-

man, the music-master, and the attorney who drew the assignment. (*Rex v. Deleval*, 3 Burr. 1434; 1 W. Blac. 410. 439, S. C.)

For taking away young ladies from the custody of their guardians, &c., see ante, 37. No information will be \*granted against a husband for endeavouring to retake his wife contrary to articles. (*Rex v. [ \*41 ] Lord Vane*, 1 W. Blac. 18.)

The court will not convert a civil into a criminal remedy. (*Lofft*, 184.) Therefore, an information will be refused against members of a corporation for misapplication of the corporation funds, the remedy being in equity. (*Rex v. Watson*, 2 T. R. 199.) The surveyor of a high road having improperly expended a large sum of money, borrowed by the trustees under an act of Parliament, without the consent of the trustees, which the act required to sanction the expenditure, the court refused a criminal information against the surveyor, in the absence of any corrupt motive expressly alleged. (*Rex v. Friar*, 1 Chit. R. 702.) So, the court have refused an information for misapplying moneys collected on a brief. (*Rex v. The Minister and Churchwardens of St. Botolph, Bishopsgate*, 1 W. Blac. 443.) So, for refusing to collect money on a brief pursuant to the act 4 Anne, c. 14. (*Rex v. Ford*, 2 Stra. 1130.)

The court refused an information for a battery in Newfoundland. (*Rex v. Hooper*, H. T. 7 Geo. 2.) So, where the facts were committed on the high seas, for an information is local. (*Rex v. Baxter*, 2 Stra. 918.) But criminal informations may be granted for misdemeanors committed in the East Indies, by persons in the service of the Queen, or of the East India Company. (See 24 Geo. 3, c. 25; 26 Geo. 3, c. 57; *Rex v. Holland*, 4 T. R. 457.) And where a coroner was obstructed, and prevented from performing his duty on board of a ship, in Portsmouth Harbour, the court granted an information. (*Rex v. Solgard*, 2 Stra. 1097.)

An information has been granted for maliciously pressing the captain of a merchant vessel as a common seaman. (*Rex v. Webb*, 1 W. Blac. 19.) But refused for a nuisance, and obstruction to a navigable river; the alleged nuisance being of long standing, and there having been no request to the defendant to remove it. (*Rex v. Green*, 1 Ld. Ken. 379.) Where an indictment for not repairing a highway \*has been thrown out by the grand jury, and they appear to have been actuated by manifest [ \*42 ] partiality and injustice, an information will be granted against the parish, as the only mode which remains of enforcing the desired repair. (1 Sess. Cas. 168; *Sayer*, R. 92; Bac. Abr. tit. "Highways," H.)

An information will be granted, upon the stat. Hen. 5, c. 4, for practising as an attorney whilst under-sheriff, provided particular acts of practice as an attorney be distinctly sworn to, but not otherwise. (*Rex v. Bull*, 1 Wils. 93.)

An information will be granted for extortion by the clerk of a market. (*Anon.*, 2 Barnard. 310: *Rex v. Robe*, 2 Stra. 999.)

Where the application is made against a man in low circumstances, residing at a distance, to whom it would be very inconvenient, if not impossible, to shew cause against the rule, and afterwards to come up to Westminster to receive judgment, if convicted, the court will not grant the rule. (*Rex v. Compton, Cald.* 246: *Anon.*, *Lofft*, 155.)

[\*43]

## \*CHAPTER IV.

OF THE APPLICATION FOR LEAVE TO FILE A CRIMINAL INFORMATION :—

1. WITHIN WHAT TIME IT MUST BE MADE. 2. BY WHOM IT MAY BE MADE; AND UNDER WHAT CIRCUMSTANCES THE PROSECUTOR IS DISQUALIFIED.
3. THE NECESSARY AFFIDAVITS IN SUPPORT OF THE APPLICATION. 4. HOW THE MOTION IS MADE, AND CAUSE SHOWN AGAINST IT; AND HEREIN OF THE OBJECTIONS AND ANSWERS WHICH MAY BE MADE BY THE DEFENDANT. RULE DISCHARGED, OR MADE ABSOLUTE—COSTS.

1. *Within what time the Application must be made.*—Every application for a criminal information must be made *within a reasonable time* after the alleged offence was committed, or the delay must be satisfactorily accounted for. "There is no precise number of weeks, months, or years; but if delayed, the delay must be reasonably accounted for. This consideration is more necessary in election contests than in others. There is ill blood enough without this addition to it." (Per Lord Mansfield, C. J., in *Rex v. Robinson*, 1 W. Blac. 541.) The only exception is in cases of bribery at Parliamentary elections, where a criminal information will not be granted until after the two years have elapsed, within which a penal action may be brought. (*Rex v. Pitt & Mead*, 1 W. Blac. 380; 3 Burr. 1335, S. C.; *Coombe v. Pitt*, 3 Burr. 1589; *Rex v. Robinson*, supra.)

Where an offence is committed before the commencement of an *issuable* term, the application should be made in that term; for it is not reasonable that the prosecutor should permit the whole of an issuable term, and the ensuing assizes, to elapse before making his application. He might [\*44] have preferred an indictment at the assizes. \*Therefore, an application in Easter-term, for an offence committed in the previous December, has been held too late. (*Reg. v. Hext*, 4 Jurist, 339, Williams, J.) But where an offence is committed before a non-issuable term, the application may be made, either in that or the second term, even against magistrates. (*Rex v. Harries and Others*, 13 East, 270; *Rex v. Morice and Others*, Id. 271, note). In one case, where an offence was committed in Easter-term, and the prosecutor did not apply till Michaelmas, the court held that the application was not too late, saying, that "two whole terms must elapse," (*Rex v. Yea, Bart.*, M. T. 34 Geo. 3, 1 Gude, 111;) but this seems inconsistent with the later authorities. Where a libel appeared in May, and the party libelled first heard of it in July, but did not apply to the publisher till November, nor move for a criminal information till January, it was held that, as the application related to the vindication of character, it should have been made promptly, and was too late. (*Rex v. Murray*, H. T. 1837; 1 Jurist, 37; *Rex v. The Editor of the Satirist*, 3 N. & M. 532; *Rex v. Barry O'Meara*, 1 Gude, 112; S. C. 4 B. & Adol. 869, note.) The general rule, however, seems to be, that leave to file a criminal information for a libel should be applied for in a *reasonable time before the expiration of the second term after the publication*; and that any delay beyond that must be satisfactorily accounted for. (*Rex v. Jollie*, 1 N. & M. 483; 4 B. & Adol. 867, S. C.; *Rex v. The Editor of the*

Satirist, 3 N. & M. 532). A motion for a criminal information against a person who is not charged as a magistrate, or public officer, may be made later than the second term after the alleged offence, if it be shewn that the prosecutor did not know of the fact in time to make an earlier application. (Rex v. Jollie, *supra*.) But the court will not admit of excuses for delay, where the application is against magistrates or public officers. Thus, where the facts tending to criminate a magistrate took place twelve months before the application to the court, they refused to grant a criminal information, although the prosecutor, in order to excuse the delay, stated \*that [ \*45 ] the facts had not come to his knowledge till very shortly previous to the application. (Rex v. Bishop, Esq., 5 B. & A. 612.) So, where the application was made against paving commissioners. (Rex v. Hartley and Others, 4 B. & Adol. 869.)

Whether the application for a criminal information *against magistrates* be made in the first or second term after their alleged misconduct, the rule nisi must be applied for sufficiently early in the term to enable them to shew cause against it in the same term. (Rex v. Beavis and Others, in Rex v. Smith, 7 T. R. 80: Rex v. Marshall and Another, 13 East, 322: Rex v. Taylor, Nolan's Rep. 204.) But the court will grant a rule nisi for a criminal information at the end of a term against a magistrate, for malpractices *during the term* in which the motion is made, although not for any misconduct before the term. (Rex v. Smith, 7 T. R. 80.)

In no case can an application for a criminal information be made on the last day of term. (Ex parte Tanner, M. T. 1838, Littledale, J., 3 Jurist, 10, S. C.: Ex parte Hayward, E. T. 1842, Q. B.)

2. *By whom the Application may be made.*—The court will never listen to an application for a criminal information by the attorney-general on behalf of the Crown: because the attorney-general has the right to exhibit one ex officio on his own responsibility, and must, therefore, exercise his own discretion. And if he think proper to do so, he may summon the defendant to show cause before him why the information should not be exhibited before he signs it. (Rex v. Phillips and Others, 3 Burr. 1564; Rex v. The Mayor of Plymouth, 4 Burr. 2089.)

It would seem that where the offence is of such a nature that the information should be exhibited (if at all) by the attorney-general ex officio, the court would not grant leave to file an information at the instance of a private prosecutor. Thus, for misdemeanors peculiarly tending to disturb the Queen or her government; "for those are \*left to the care of the [ \*46 ] attorney-general." (4 Blac. Com. c. 23, s. 3.)

Generally speaking, the person on whose behalf a criminal information is moved for, must be the party injured; and he must come into court *with clean hands, and be free from blame*. (Lofft, 315: Rex v. Wroughton and Others, 3 Burr. 1663.) Therefore, the court refused an information at the instance of cheats and gamblers against their brethren in iniquity, for a conspiracy to cheat them out of a large sum of money at a foot race. (Rex v. Peach and Others, 1 Burr. 548.) Upon an application against magistrates for corruptly convicting a person of an offence, he must expressly swear to his entire innocence of the charge. (Rex v. Athay, 2 Burr. 653: Rex v. Webster, 3 T. R. 388.) Where the prosecutor is libelled he must

expressly deny the truth of the matters imputed in the libel. (*Rex v. Bickerton*, 1 Stra. 498: *Rex v. Miles*, 1 Doug. 284: *Rex v. Wright*, 2 Chit. R. 162: *Rex v. Taylor*, H. T. 1837, 1 Jurist, 53, S. C.) For it is an invariable rule not to grant an information for a libel without an exculpatory affidavit, unless where the party libelled is abroad, at a great distance, or the subject-matter of the charge is general imputation, or an accusation of criminal language in Parliament. (*Rex v. Haswell*, and *Rex v. Bate*, on the prosecution of *The Duke of Richmond*, 1 Doug. 387: *Rex v. Wright*, 2 Chit. R. 162.) But, although a party applying for a criminal information must shew himself to be an innocent party, yet the court made a rule absolute for such information against the publisher of a libel which affected several parties, notwithstanding that the character of the person principally attacked, and on whose affidavit (among others) the rule nisi had been obtained, was impeached on showing cause. (*Reg. v. Gregory*, 1 Per. & Dav. 110; 8 Ad. & Ell. 907, S. C.) In Easter term, 30 Geo. 3, the Duke of Athol having applied for an information against the printer of a newspaper for a libellous paragraph in his paper, stating that the Duke and his family were held in such general abhorrence in the Isle of Man, [ \*47 ] that if he should succeed in obtaining an act then depending in Parliament it would occasion a revolt; the court held that no affidavit from the Duke was necessary. (Doug. R. 390, note; and see *Rex v. Dennison*, Lofft, 148.) The court will grant a criminal information for a libel upon a *public body* of men (as the clergy of the diocese of Durham,) upon an affidavit, stating the publication of the libel by the defendant without any affidavit of the charge being untrue. (*Rex v. Williams*, 5 B. & A. 595.)

The prosecutor must not, in any manner, have attempted to take the law into his own hands, or to retaliate upon the defendant, directly or indirectly. Thus, upon an application for an information for sending a challenge the rule will be discharged, if it be made to appear, by affidavit, that the prosecutor sent the first challenge; (*Rex v. Hankey*, 1 Barr. 316;) or that, in the course of the transactions out of which the challenge arose, the prosecutor has himself sent a challenge to a third person connected with the party against whom he moves, although the prosecutor's challenge was sent into a foreign country, and did not show any intention to break the peace here. (*Rex v. Larrieu*, 7 Ad. & Ell. 277.) So, they refused an information for an assault on the mayor of Yarmouth, whilst in the execution of his office, it appearing that the mayor first struck the defendant. (*Rex v. Symonds*, Cases temp. Hardwicke, 240.) In order to maintain application for a criminal information for a libel, the party applying must leave himself wholly in the hands of the court, and in no way whatever make libellous attacks on the other side. (*Reg. v. The Proprietors of the Nottingham Journal and Others*, 9 Dowl. 1042.) "Persons who ask for the interference of this court in their favour, by the exercise of its summary jurisdiction, must leave themselves wholly in the hands of the court. If, in any way, they make attacks on the parties against whom they ask for our summary interference, they disentitle themselves to succeed in their application. There is no restrictive qualification on this rule which has been again and [ \*48 ] again laid down in this court." \*(S. C. Per Lord Denman, C. J.) Where a libel is published in a newspaper, reflecting upon the ver-

dict of a jury, and one of the jurors sends to the others copies of a letter, signed on behalf of himself and his fellows, intended to be inserted in a newspaper, containing animadversions upon the libel, and the other jurors *take no step to prevent* or express their disapprobation of the publication of such letter, the court will not grant to those jurors a summary remedy by criminal information. (Reg. v. Lawson, 1 Gale & D. 15; 1 Q. B. 486.)

A party applying for a criminal information must discontinue any civil action for the same cause, before he can call upon the defendant to shew cause against the rule nisi: it is not sufficient that he offer to relinquish the civil action, in case the court should grant the information. (Rex v. Fielding, Esq., 2 Burr. 719; 2 Lord Ken. 386, S. C.) Indeed, it is now established as a general rule, that when a person applies for an information he is understood to waive his right to bring an action, unless the court should, on hearing the whole matter, be of opinion that it is a proper subject to be tried in a civil action, and should specifically give him leave to do so. (Rex v. Sparrow and Another, 2 T. R. 198.) "It frequently happens that informations are moved for merely to sift out the opinion of the court, even when the party thinks there is little probability of succeeding; it is unreasonable to engage the time and attention of the court in such a manner, and such applications are unnecessary, if the party resort to his private remedy; and if an information be granted, it is of course to stay the proceedings in an action for the same cause." (S. C. per Ashhurst, J.) The court will not grant an information where the prosecutor has already preferred an indictment, and the grand jury found a true bill, although it was quashed for insufficiency. (Anon., 8 Mod. 187.) The court refused a rule for a criminal information for an assault, upon its appearing that the applicant had *taken out a warrant* against the other party, though the applicant offered that it should be part of the rule that he should *\*abandon* the proceedings on the warrant. (Ex parte —, Gent, one &c., 4 [ \*49 ] Ad. & Ell. 576, note.) But where the defendant threatened the prosecutor to assault him the first time they met in the street, to which the prosecutor answered, that he would give the defendant into custody if he did so; on their meeting afterwards in the street, the defendant assaulted the prosecutor, who therefore called a policeman and gave him into custody, but without warrant, the policeman thinking it unnecessary, though he had not witnessed the assault, as the defendant expressly confessed it in his presence: the defendant was locked up at the station-house till he gave bail to appear before the police magistrate: he appeared accordingly, but the prosecutor declined to press the charge there, saying that he should take another remedy; and he afterwards moved for a criminal information: held, that the prosecutor could not be considered as having *electd his remedy* in the first instance, so as to preclude himself from moving for an information. (Reg. v. Gwilt, 11 Ad. & Ell. 587; 3 P. & D. 176; 8 Dowl. 476, S. C.) Where a defendant was convicted upon a criminal information for an assault, and, upon his being brought up for judgment, it appeared on the affidavits, that the prosecutor had commenced an action for the same assault, the court refused to pass any sentence whatever upon the conviction, although the prosecutor offered then to discontinue the action: but per Lord Denman, C. J., "It is too late now; it should have been done before; the court cannot pass sentence for the assault under these circumstances: but as the

defendant, in addressing the court, has used very violent expressions towards the prosecutor, he must give security to keep the peace; that is all that can be ordered." (Rex v. O'Gorman Mahon, 4 Ad. & Ell. 575.)

The court will not entertain an application for a criminal information for a libel where no imputations of a serious nature are made individually on the person applying for the information; and if the ground of application be [ \*50 ] light or trivial, they will leave him to his remedy by action or indictment. (Reg. v. Mead, Michaelmas Term, 1840, Patteson, J.; 4 Jurist, 1014, S. C.) The court refused an application for a criminal information for assaulting Mr. Nox Ward, to force him to sign a paper which the defendant produced, but which Mr. Ward *refused to sign*. (Anon., 2 Barnard. 87.) So, they discharged a rule nisi for an information against an attorney for writing a letter to another attorney, threatening (without prejudice) to horsewhip his client, because of certain insulting pleas put upon the record in a civil action; the letter being considered too absurd and trivial to warrant an information. (Reg. v. Lane, 31 Jan. 1843, Q. B.) Where the prosecutor has subscribed to an illegal undertaking, apparently for the purpose of making the application, the court will not grant the rule. (Rex v. Dodd, 9 East, 516.)

The court will grant a criminal information for a conspiracy to raise the price of salt, or any other necessary of life, *from what quarter soever the complaint comes* (except the Attorney-General on behalf of the crown, for he may file one ex officio). It matters not that the party applying for the information seems himself in some measure faulty, and the application proceeds from a selfish motive. (Rex v. Norris and Others, 2 Lord Ken. 300.) For such an application materially concerns the public; and therefore, on grounds of public policy, the court will grant a rule in such cases, notwithstanding the misconduct of the prosecutor. Where the offence is against the public interest, as bribery in the election of an alderman, who will, by virtue of the office, be a justice of the peace, the court will grant an information on the sole testimony of a *particeps criminis*, if uncontradicted. (Rex v. Steward and Others, 2 B. & Adol. 12.)

3. *Affidavits in Support of the Application.*—The affidavits made in support of an application for a criminal information must be complete and sufficient in every respect in the first instance. It is most important to attend to this; for, if there be any material defect in the affidavits, [ \*51 ] the court, on refusing the rule to show cause, will not usually give leave to renew the application upon amended affidavits, although that has sometimes been permitted. (Rex v. Wright, 2 Chit. R. 162; Rex v. Williamson, 3 B. & A. 582.) And it is now clearly settled, that if a party, through his own neglect, makes an application to the court on insufficient materials, and his rule is on that ground *discharged*, he cannot afterwards be allowed to supply the deficiency, and to renew his application. (Rex v. Smithson, 4 B. & Adol. 861; 1 N. & M. 775, S. C.; Reg. v. The Manchester and Leeds Railway Company, 8 Add. & Ell. 413; 1 Per. & Dav. 164, S. C.; Reg. v. Harland, 8 Dowl. 323; Saunderson v. Westley, 8 Dowl. 652; Ex parte Hasleham, 1 Dowl. N. S. 792; Reg. v. Pickles and Another, 21 Law J., Q. B., 40.) "The rule is express, that a party, who has a full opportunity of bringing his case before the court, must do so in



the first instance. If he neglects the means of doing so, he cannot be allowed to come again, and put the other party to the trouble and expense of a second attendance." (Reg. v. The Inhabitants of Barton, 9 Dowl. 1021.) Nor will the court permit the rule nisi to be enlarged, in order that some material defect in the affidavits may be supplied, (*Ex parte Williams*, 5 Jurist, 1133,) even though such defect be merely in the *jurat*. (Rex v. Cockshaw, 2 N. & M. 378; but see *Shaw v. Perkin*, 1 Dowl. N. S. 306.) The only exception to the general rule seems to be where the previous application was founded upon affidavits defective in their title, but in no other respect. (Reg. v. Jones, 8 Dowl. 307.) In one case, under very special circumstances, the court permitted an application for a criminal information to be renewed upon fresh affidavits, where it manifestly appeared that the former application was defeated by gross perjury: there a rule nisi for a criminal information for a libel had been discharged on an affidavit made by a person who swore to the truth of the libel: that person was indicted for perjury; the bill was found, and he absconded: it appeared from the affidavits of several persons, that the former affidavit was entirely untrue: the court, under these circumstances, granted another rule nisi for a criminal information, and made it absolute. (Rex v. Eve, 1 N. & P. 229; 5 Ad. & Ell. 780, S. C.) But, generally speaking, where the affidavits for and against a motion are conflicting, and the court discharges the rule, the application can never afterwards be renewed upon fresh or additional affidavits. (Rex v. Smithson, 4 B. & Adol. 861; 1 N. & M. 775, S. C.; Rex v. Orde, 8 Ad. & Ell. 420, note; Rosset v. Hartley, 5 N. & M. 415; 7 Ad. & Ell. 522, note.)

Upon an application for a quo warranto information, it seems that a defect in the prosecutor's affidavits may sometimes be remedied by matters shown in the affidavits produced by the defendant, (Rex v. Mein, 3 T. R. 596;) but that is considered in the nature of a civil proceeding, to try a civil right or title. On applications for a criminal information, a defect in the prosecutor's affidavits cannot be so supplied. And therefore, if the affidavits on which a rule nisi is granted for a criminal information for a libel do not sufficiently swear to a publication, the rule cannot be supported, though the affidavits on the other side admit the publication. (Reg. v. Baldwin, 8 Ad. & Ell. 168; 3 N. & P. 342, S. C.)

*Title.*—The affidavits upon which the rule nisi is moved for, should be intitled "In the Queen's Bench," but not in any cause or prosecution. The affidavits made upon showing cause, may be intitled in the same manner; or they may be intitled thus: "In the Queen's Bench, The Queen against J. S." Either way is sufficient after a rule nisi has been granted, but not before. (Rex v. Jones, 1 Stra. 704; Rex v. Cole, 6 T. R. 640; Rex v. Almon, 6 T. R. 642, note; Rex v. Robinson, cited 6 T. R. 642; Rex v. Harrison, 6 T. R. 60; 1 Gude, 116.)

*Deponents.*—Formerly the court would not grant a rule for a criminal information on circumstances set forth in a Quaker's affirmation, (Rex v. Wych, 2 Stra. 872;) nor even hear an affirmation read to show cause against a criminal information, (Rex v. Gardner, 2 Burr. 1117,) unless the application were against the Quaker himself. (Rex v. Shacklington, H. 8 Geo. 2, Andrews, R. 201, note; Rex v. Gardner, supra.) [\* 53] But now, by 9 Geo. 4, c. 32, s. 1, and 3 & 4 Will. 4, c. 49, a Quaker or

Moravian may make a solemn affirmation or declaration in lieu of an oath, even in criminal cases. So may Separatists, *Dy 3 & 4 Will. 4, c. 82*; or any person who *shall have been* a Quaker or a Moravian. *1 & 2 Vict. c. 77*.

The prosecutor must, of course, join in the affidavit; and where any personal imputations are made upon him he must distinctly swear to his entire innocence. (*Rex v. Wright, 2 Chit. R. 162.*) For the rule is, that a person making an application for a criminal information must come into court with clean hands, and be free from blame. (*Ante, 46.*) Therefore, upon an application against magistrates for corruptly convicting a person of an offence he must expressly swear to his entire innocence of the charge.) (*Rex v. Athay, 2 Burr. 653: Rex v. Webster, 3 T. R. 388.*) Where the prosecutor is libelled he must expressly deny the truth of the matters imputed in the libel. (*Rex v. Bickerton, 1 Stra. 498: Rex v. Miles, 1 Doug. 284.*) For it is an invariable rule not to grant an information for a libel without an exculpatory affidavit, unless where the party libelled is abroad, at a great distance, or the subject-matter of the charge is general imputation, or an accusation of criminal language in Parliament. (*Rex v. Haswell, and Rex v. Bate, on the prosecution of the Duke of Richmond, 1 Doug. 387; Rex v. Dennison, Lofft, 148; Ex parte The Duke of Athol, 1 Doug. 390, note.*) Thus, where a rule for a criminal information was obtained against the proprietor of a newspaper, and the affidavit of the applicant shewed that the alleged libel, amongst other things, *insinuated* that certain articles in a rival newspaper emanated from him, but his affidavit did not negative any knowledge of the articles, the court discharged the rule. (*Rex v. Taylor, H. T. 1837, 1 Jurist, 53, S. C.*) But where a libel grossly reflected upon a nobleman *and his family*, the court made the rule absolute on their behalf, although the father [ \*54 ] joined in the application, and was not free from blame. \*(*Reg. v. Gregory, 8 Ad. & Ell. 907; 1 Per. & D. 110, S. C.*) Where the application materially concerns the public interests, the court will grant an information on the sole testimony of a *particeps criminis*, if uncontradicted, (*Rex v. Steward and Others, 2 B. & Adol. 12;*) for in such cases, on grounds of public policy, the court will not look into the motives or demerits of the prosecutor. (*Rex v. Norris and Others, 2 Lord Ken. 300.*) It is, however, very important that in other cases the application be sufficiently supported; and if the material facts are likely to be disputed, several persons should join in the affidavits, otherwise, perhaps, the prosecutor will be "sworn out of court," and have his rule discharged, with costs, (*Rex v. Smithson, 4 B. & Adol. 861; 1 N. & M. 775, S. C.:*) after which, as we have before seen, he cannot be permitted to renew his application upon further affidavits. (*Ante, 51.*) But persons who join in affidavits in support of the application should be aware that they do thereby, in effect, place themselves within the power of the court; and if the court think fit to discharge the rule nisi, and the deponents, or any of them, appear to have been actuated by vindictive motives, or to have used improper threats, or otherwise to have grossly misconducted themselves, with reference to the matters in question, the court will sometimes discharge the rule, *with costs to be paid by them*, and that although the deponent acts as attorney for the real prosecutor. *Rex v. Fielding, 2 Burr. 654; Rex v. Borron, 3*

B. & A. 432; Id. 440. But the court have no power to order costs to be paid by any body who is not a party to the application, and does not join in any affidavit made in support of it. (*Reg. v. Thomas and Another*, 7 Ad. & Ell. 608; *Reg. v. Dodson*, 9 Ad. & Ell. 704; *Haywood v. Gifford and Grove*, 4 Mee. & Wel. 194.)

*Substance of Affidavits.*—The affidavits in support of an application for a criminal information must, in substance, prove a crime to have been committed, (*Rex v. Hilbers*, 2 Chit. R. 163,) and must bring it home to the defendant, by such legal evidence as would warrant a grand jury in finding a true bill against the defendant for the imputed offence. Therefore, upon an application for sending a challenge, it is not sufficient [\*55] for the prosecutor and others to swear that the challenge was delivered to him by the defendant's clerk, named Hatherly, who said he brought it from the defendant, but who refused to make an affidavit to that effect. (*Rex v. Willett*, 6 T. R. 294.) There the court refused to grant the rule, "because the affidavit on which it was prayed for was not legal evidence. They said, that in these cases they were placed in the room of a grand jury; that if a bill of indictment were preferred before a grand jury, the affidavit, or the oaths of these persons of what Hatherly had said, would not be legal evidence against the defendant; and that this court could only grant an information on evidence that would support a bill of indictment." *Rex v. Younghusband* (4 N. & M. 850) is to the same effect. So, where the affidavits in support of an application for a criminal information against a party for writing letters provoking a breach of the peace, stated the belief of the deponents, that the letters were in the handwriting of the party, not from their own knowledge of the handwriting, but from the information of other persons; the court refused a rule to show cause, on the ground that such evidence would not warrant a grand jury in finding a true bill. (*Ex parte Williams*, 5 Jurist, 1133.) Upon a motion for an information for a challenge, it is not necessary to annex the original letter containing the challenge; but a fair copy, duly verified, has been held sufficient. (*Rex v. Chappel*, 1 Burr. 402.) Upon an application for a criminal information for a libel published in a newspaper, it must be distinctly proved by legal evidence that the defendant published the libel; it is not sufficient to swear that the defendant "did print and insert in a certain newspaper called *The Standard*, a certain libel relating to this deponent, a copy of which newspaper is annexed to this affidavit." (*Reg. v. Baldwin*, 8 Ad. & Ell. 168; 3 N. & P. 342.) In such a case, the proof may be either according to the common law, as by shewing that the particular paper containing the libel was purchased at the defendant's shop; or, according to the statute 6 & 7 Will. 4, c. 76, s. 8, by a certificate obtained from the commissioners of stamps, [\*56] duly verified, together with a newspaper corresponding in title, &c.: but in either case, it is essentially necessary that the newspaper be annexed to the affidavits, and expressly mentioned in the rule to show cause. (*Reg. v. Woolmer*, 12 Ad. & Ell. 422; 4 Per. & Dav. 137, S. C.) On applications against magistrates, the affidavits must show, not only that they acted illegally, but that they did so from corrupt or improper motives, (for that is the crime imputed to them); and where only strong circumstances of suspicion are stated, the deponents must pledge their belief upon oath, that the justice against whom the application is made acted from corrupt motives.

(*Rex v. Williamson and Another*, 3 B. & A. 582; *Rex v. Jackson and Another*, 1 T. R. 653, ante, 25, 26.) Sometimes the court will not be satisfied with affidavits only. Thus, in *Rex v. Heber*, (2 Stra. 915,) the court would not hear a motion against a justice for convicting without summons, until the conviction was removed before them. So, where an information was moved for against a clergyman for perjury at his admission to a living, upon an affidavit that the presentation was simoniacal, the court refused to grant it till he had been convicted of the simony. (*Rex v. Lewis*, 1 Stra. 70.)

There must be no improper suppression of material facts, otherwise the court will discharge the rule, and probably with costs. (*Rex v. Wroughton and Others*, 3 Burr. 1683.) Thus, upon an application against a magistrate for corruptly convicting a defendant of an offence without any previous summons, the rule will be discharged, if it appear in answer, that the justice *sent for* the defendant, who actually appeared and applied for mercy. (*Rex v. Athay*, 2 Burr. 653.) So, where a magistrate refused to grant a warrant, for certain insufficient reasons, but at the same time stated his readiness to investigate the charges, if the Court of King's Bench, on application for a mandamus, should think he ought to do so, and such statement [ \*57 ] was \*not mentioned in the affidavits made in support of the application for a criminal information, the court discharged the rule with costs. (*Rex v. Borron*, 3 B. & A. 432; *Id.* 438; and see *Rex v. Hughes*, 7 B. & C. 719; 1 Man. & Ry. 625, S. C.)

The affidavits should carefully avoid reflecting upon the defendant unnecessarily; for if they do so, and the prosecutor appears to be actuated by such an improper spirit as might have led to what he complains of, the rule will be discharged. Thus, where a magistrate applying for a criminal information against one Thomas Burn for slanderous words addressed to him on the hearing of a summons before him for non-payment of wages, in his affidavit stated, "That the said Thomas Burn, who bears the character of a most litigious shuffling man, tried by every possible means to avoid payment," and repeated an observation of his own made at the time, viz. that "Burn was a very shifty man, and required forcing on such occasions;" the court held that such statements in the affidavit were impertinent and censurable, and on that ground discharged the rule. (*Rex v. Burn*, 7 Ad. & Ell. 190; 2 N. & P. 152; 6 Dowl. 36.) And per Lord Denman, C. J., "The prosecutor has stated a sufficient case for a criminal information; but he has, in the early part of his affidavit, introduced words irrelevant and reflecting on the character of the party against whom he applies; and afterwards, in explanation of something which he states to have passed, he goes into a narrative of matters impertinent to the cause, and calculated only to prejudice the minds of the court. Parties who come before the court with affidavits are to confine themselves to the simplest statement of that which induces them to make the application, and are not to enter upon discussions like this, unless the nature of the subject renders them absolutely necessary. And we must say here, that the spirit which has been shewn in framing the affidavit makes us doubt whether the spirit evidenced by the prosecutor, at the time when this party came before him, was not such as might lead to what is now complained of. The court cannot make the rule absolute." (7 Ad. & Ell. 193, S. C.)

\*If any delay has taken place in making the application, it should be satisfactorily accounted for in the affidavits. (Rex v. Jollie and [ \*58 ] Another, 4 B. & Adol. 867 ; 1 N. & M. 483, S. C. ; Rex v. The Editor of the Satirist, 3 N. & M. 532.) But it seems that an excuse for delay will never avail where the application is against magistrates or other public officers. (Rex v. Bishop, 5 B. & Ad. 612 : Rex v. Hartley and Others, 4 B. & Adol. 369, note.)

Upon applications against magistrates, there must be an affidavit shewing that due notice has been given of the intended motion. (Ante, 23, 24.) But in other cases no notice is necessary. (1 Gude, 116.)

*Jurat.*—The jurat should mention the deponent's names, if more than one, also the place and county where the affidavit is sworn, (Rex v. Cockshaw, 2 N. & M. 378 : Rex v. The Justices of the West Riding of Yorkshire, 3 M. & S. 493 ;) but it seems sufficient if the county be mentioned in the body of the affidavit, and merely referred to in the jurat. (Rex v. Burn, 7 Ad. & Ell. 190 ; 2 N. & P. 152 ; 6 Dowl. 36, S. C.) The affidavit may be sworn *abroad*, (Rex v. The Editor of the Satirist, 3 N. & M. 532 ;) but not in any case before the prosecutor's attorney. (Rex v. The Gaolers of Ipswich, 2 Lord Ken. 421 : Rex v. The Justices of Shrewsbury, 2 Barnard. 272.) Affidavits sworn and used before a judge at the assizes, to put off the trial of another prosecution against the same defendant, have been permitted to be used in support of an application for a second criminal information against him. (Rex v. Jolliffe, 4 T. R. 285.)

In Appendix A., Nos. 4 & 5, will be found a precedent of an affidavit for a criminal information for a libel in a newspaper, which affidavit appears to have been carefully settled by counsel. Also, form of certificate and affidavits proving the publication of a newspaper, pursuant to 6 & 7 Will. 4, c. 76, s. 8. The above forms, together with the preceding directions, will be sufficient to enable proper affidavits to be prepared in any case.

\*4. *The Motion how Made and Opposed.*—The motion must be made by counsel, as none but gentlemen at the bar are allowed [ \*59 ] to move for criminal informations. Rex v. The Justices of Lancashire, 1 Chit. R. 602 ; Ex parte Hunt, M. T. 1819 ; 1 Gude, 113.)

Before moving, counsel should take care to see that the affidavits in support of the application are complete, and sufficient in every respect. (Ante, 50 to 58.) The motion cannot be made on the last day of term. (Ex parte Tanner, M. T. 1838 ; Littledale, J., 3 Jurist, 10, S. C. ; Ex parte Hayward, E. T. 1842, Q. B.) Nor so late in the term that cause cannot be shewn against it during the same term, provided the application be against magistrates or other public officers. (Ante, 45.)

One rule may be granted against several defendants for one joint offence, as for a conspiracy, (Rex v. Hilbers, 2 Chit. R. 163,) or the like. So, where several defendants were guilty of a riot, as many as seventy were included in one information. (Prynne's case, 5 Mod. 459 : S. C. nom. Rex v. Berchet and Others, 1 Shower, 106.) So where several defendants joined in singing before the door of Daniel Cooke, a grocer, at Cheltenham, two libellous songs, reflecting on the honesty and virtue of his son and daughter, with intent to discredit him and his children. (Rex v. Benfield, 2 Burr. 980.)

Several rules against different defendants will not warrant one joint information against them all. (*Rex v. Heydon and Others*, 3 Burr. 1270.)

The rule to shew cause must be obtained from the clerk of the rules at the Crown Office. (See the form, Appendix A, No. 6.) A copy thereof must be served on the defendant, either personally, or by leaving the same with some member of his family, or his servant, at his place of residence; at the same time shewing the original rule. (*Rex v. Badouin*, 2 Stra. 1044; 1 Gude, 116; 1 Chit. Crim. L. 859.) An affidavit of such service should be forthwith made. (See the form, Appendix A, No. 7.) A rule nisi for an information cannot be served on a clerk in court, employed [ \*60 ] formerly by the defendants, (*Anon.*, 2 Lord Ken. 496;) \*nor upon the defendant's wife, at his place of residence, during his absence, abroad. (*Rex v. Badouin*, 2 Stra. 1044: *Rex v. Baldwyn*, Cas. temp. Hardwicke, 271.) If the prosecutor neglect to serve the defendant with a copy of the rule nisi, or is prevented by reason of the defendant's not having any fixed place of residence, or by his absence abroad, the court will enlarge the rule as of course, to a subsequent day, (1 Gude, 117;) and such enlarged rule may be served in the same manner as an original rule to shew cause.

*Shewing Cause.*—The defendant cannot be permitted to shew cause against the rule, unless he has taken an office copy of the affidavits upon which the rule nisi was granted. (*Reg. v. The Inhabitants of Rotherham*, 21 Law J., M. C., 17.)

Affidavits to be used by the defendant on shewing cause may be intitled, "In the Queen's Bench" (without more), or "In the Queen's Bench, The Queen against J. S." (*Ante*, 52.) They should either contradict or satisfactorily explain the material facts upon which the rule is founded, or shew that the prosecutor has disqualified himself to make the application, either by misconduct on his part, with reference to the transaction in question, or by having adopted some other remedy against the defendant. (*Ante* 46 to 49.) If the defendant is conscious of his innocence of the charge alleged against him, he should take care to deny it in the most express and comprehensive terms, and not confine himself to a mere contradiction of the evidence stated by his accuser. (1 Chit. Crim. L. 860.) Thus, where on a motion for an information for publishing a libel, the only affidavit produced was that of a man who asserted that the defendant had confessed to him the publication of the matter charged as offensive, the affidavit of the defendant, that no such confession was made, will not induce the court to discharge the rule, but he should have denied the fact of publication itself, on which the charge was founded, (*Rex v. Sharpe, Andrews*, R. 384;) and even where [ \*61 ] the facts of the accusation cannot be denied, it is still open to the \*party against whom it is made to allege the purity of his intentions, and to negative the allegations of corrupt design, which will frequently induce the court to refuse their sanction to the severer course, and leave the prosecutor to indict, if he think proper. (1 Chit. Crim. L. 860; *Dough*. 588.)

If the defendant be not prepared with his affidavits, &c., by the time mentioned in the rule to shew cause, he should instruct his counsel to inform the gentleman who moved for the rule, that he shews cause against it. This will probably prevent the rule being brought on before the defend-

ant is fully prepared ; but if not, his counsel should be instructed to move to enlarge the rule, either from the beginning to nearly the end of the term, or from the end of the term to the commencement of the ensuing term. Sometimes a short affidavit is necessary to explain the cause of the delay required. The court, on enlarging a rule nisi for a criminal information, at the instance of the defendant, usually impose upon him terms, viz. to file his affidavits a certain number of days (about a week) before the enlarged day for shewing cause ; also, to appear to the information immediately when filed, and to plead thereto within four days afterwards. (1 Gude, 117, 118 ; see the form of an enlarged rule, Appendix A., No. 8.) But it seems that no such terms will be imposed, where the prosecutor has improperly delayed serving the rule nisi, and thereby prevented the defendant from being prepared to shew cause against it at the time therein appointed. (Reg. v. Anderson, 9 Dowl. 1041.)

The defendant on showing cause against the rule, may raise (inter alia) any of the following objections that are applicable to his case :—viz. that he is a very poor man in low circumstances, residing at a great distance, and that it will be extremely inconvenient, if not impossible, for him to come up to Westminster to receive judgment if convicted. (Rex v. Compton, Cald. 246 ; Anon., Lofft, 155.) That the application for the rule nisi was made too late. (Ante, 43.) That the prosecutor has disentitled himself to a criminal \*information by his misconduct, (Ante, 46 ;) or by adopting some [ \*62 ] other remedy. (Ante, 48.) That the prosecutor has made a previous [ \*62 ] unsuccessful application. (Ante, 51.) That the alleged offence is of such a nature that it should be prosecuted (if at all) by and in the name of the Attorney-General, ex officio. That the alleged offence amounts to a felony ; or on the other hand, that it is of too trifling a nature to warrant an information, and the prosecutor should therefore be left to proceed by indictment or action. (Rex v. Proby and Another, 1 Lord Ken. 250 : Anon., Lofft, 323 : Anon., 2 Baraard. 87 : Anon., 2 Barnard. 166 : Reg. v. Mead, 4 Jurist, 1014 : Reg. v. Lane, ante, 50.) That the affidavits made in support of the application are improperly intitled. (Ante, 52.) That the jurat is defective. (Ante, 58.) That the affidavits appear to have been sworn before the prosecutor's attorney. (Ante, 58.) That the affidavits do not prove the offence to have been committed by the defendant, by such *legal evidence* as would warrant a grand jury in finding a true bill against the defendant for the alleged offence. (Ante, 55.) That some material fact is not sworn to in the prosecutor's affidavit, as where on an application for a libel, the *publication* is not sufficiently proved ; and it matters not in such case that the publication is admitted in the affidavits filed by the defendant. (Reg. v. Baldwin, 8 Ad. & Ell. 168 ; 3 N. & P. 342.) That some material fact has been improperly suppressed. (Ante, 56.) That the affidavits contain *unnecessary imputations* upon the defendant. (Ante, 57.) That the affidavits made in support of the application are satisfactorily answered by the affidavits made in opposition. (Tuite or Chote v. Fawkes, Lofft, 64 ; Rex v. Smithson, 4 B. & Adol. 861 ; 1 N. & W. 775, S. C. ; Rex v. Eve, 5 Ad. & Ell. 780 ; 1 N. & P. 229, S. C.) But if the alleged offence be of a very serious nature, the court will sometimes make the rule absolute, however positively all the facts are denied. (Anon., 2 Barnard. 27 : Rex v. Linn, 2 Barnard. 242.) On the other hand the defendant may sometimes escape

[\*63] by shewing to the satisfaction of the \*court that he acted (however erroneously) under the bonâ fide belief that he was merely exercising a legal right, (*Rex v. Parkyns*, 3 B. & A. 668; *Reg. v. Blurton*, M. T. 1837—*Littledale, J.*; 2 *Jurist*, 33, S. C.); or that he has not wilfully done wrong, and it is doubtful in point of law whether he is subject to any thing more than a penalty. (*Rex v. Grosvenor*, 1 Wils. 18; 2 *Stra.* 1193, S. C.; *Rex v. Denison*, 2 *Lord Ken.* 259.)

It frequently happens (especially in libel cases), that the prosecutor will permit his rule to be discharged, upon a full and satisfactory apology being made in open court, and upon payment of costs.

If sufficient cause be shewn against the rule, the court will discharge it, either with or without costs, according to their discretion. If nothing be said about costs, and the rule is discharged, the defendant will not be entitled to any costs, therefore his counsel should take care to *ask for them* (if necessary) at the time the rule is discharged. "It is not the practice of this court to give costs to a party who discharges a rule on a preliminary objection." (Per Cur. in *Reg. v. The Proprietors of the Nottingham Journal and Others*, 9 *Dowl.* 1043.) Sometimes the court will not give the defendant costs, although they feel bound to discharge the rule on the merits. (*Rex v. Jackson*, *Lofft*, 147; *Rex v. Fielding*, 2 *Burr.* 719; *Id.* 722). Thus, where the defendant (a magistrate) appeared to have acted somewhat irregularly and improperly in his own case, (*Rex v. Whately*, clerk, 4 *Man. & Ry.* 431;) but generally speaking, if the application turned out to be unfounded, especially if it be against magistrates, or the prosecutor appears to have acted vexatiously, or from malicious motives, or to have improperly suppressed material facts, the rule will be discharged with costs. (*Rex v. Smithson*, 4 B. & Adol. 861; 1 *N. & M.* 775, S. C.; *Rex v. Fielding*, 2 *Burr.* 654; *Rex v. Borron*, 3 B. & A. 432; *Id.* 440; *Rex v. Wroughton*, 3 *Burr.* 1683; *Rex v. Athay*, 2 *Burr.* 653; *Rex v. Hughes*, 7 B. & C. 719; 1 *Man. & Ry.* 625, S. C.) Sometimes where sufficient ground is laid

[\*64] for an information, but it appears \*to the court, that, under all the circumstances, the defendant will be sufficiently punished by having to pay all the costs of the application, they will discharge the rule upon his undertaking to do so. (*Rex v. Morgan*, *Dougl.* 314; *Rex v. Cozens and Another*, *Dougl.* 410.) In *Rex v. Holland and Another*, (1 *T. R.* 692,) the court discharged the rule as to one defendant, (who was not altogether blameless,) upon his paying the costs of the application as against himself, and as to the other defendant they granted the information. Where two magistrates appeared to have acted illegally, but not from corrupt motives, the court discharged the rule, but ordered them to pay the costs of the application. (*Reg. v. Badger and Cartwright*, H. T. 1843; ante, 30.)

If the rule be discharged, and the prosecutor contemplates bringing an action in respect of the same transaction, he should take care to obtain special leave of the court for that purpose, at the time the rule is discharged. (*Rex v. Sparrow and Another*, 2 *T. R.* 198; ante, 48.)

The court, on granting an information, will not require the prosecutor to give security for costs, in case the defendant should be acquitted, beyond the extent of the recognizance, in £20, required by the statute 4 & 5 W. & M. c. 18, s. 2. (*Rex v. Brooke and Others*, 2 *T. R.* 190.)



The rule absolute is drawn up by the clerk of the rules, at the Crown Office. (See the form, Appendix A., No. 10.) It seems unnecessary to serve a copy on the defendant or his solicitor, but it is usually done.

## \*CHAPTER V.

[ \*65 ]

THE INFORMATION—HOW FRAMED—OUTLINE OF; AND GENERAL RULES—  
STATUTE 7 GEO. 4, c. 64, ss. 19, 20, 21—AMENDMENTS.

A CRIMINAL Information is to the following effect:—

1st.—*By the Attorney-General ex officio.*

Of Term, in the year  
of Queen Victoria.

*Middlesex,* } BE it remembered, That Sir Frederick Pollock, Knight,  
} Attorney-General of our present Sovereign Lady the Queen,  
who for our said Lady the Queen in this behalf prosecuteth, in his proper  
person, cometh here into the court of our said Lady the Queen, before the  
Queen herself at Westminster, on [Monday] the day of , in this  
same term, and for our said Lady the Queen giveth the court here to under-  
stand and be informed, That *[here state the facts and circumstances con-*  
*stituting the offence with the same certainty and precision as in an*  
*indictment, and in the same form, and according to the same rules, except*  
*that, instead of saying, "and the jurors aforesaid, upon their oath aforesaid,*  
*do further present that," &c., say, "And the said Attorney-General of our*  
*said Lady the Queen, for our said Lady the Queen, further giveth the court*  
*here to understand and be informed, That," &c.; which is also the form of*  
*the commencement of a second or subsequent count. Each count should*  
*conclude as an indictment, stating the offence to be* ["against the form of  
the statute, 'or statutes,' in such case made and provided, and] *against the*  
*peace of our said Lady the Queen, her crown, and dignity." Conclude the*  
*information as follows:* "Whereupon the said \*Attorney-General  
of our said Lady the Queen, for our said Lady the Queen, prayeth [ \*66 ]  
the consideration of the court here in the premises, and that due process of  
law may be awarded against him the said J. S. in this behalf, to make him  
answer to our said Lady the Queen touching and concerning the premises  
aforesaid."

(Signed) F. POLLOCK.

2nd.—*By the Master of the Crown Office.*

Of Term, in the year  
of Queen Victoria.

*Yorkshire,* } BE it remembered, That Charles Francis Robinson, Esquire,  
} Coroner and Attorney of our present Sovereign Lady the

Queen, in the court of our said Lady the Queen, before the Queen herself, who for our said Lady the Queen in this behalf prosecuteth, in his proper person, cometh here into the court of our said Lady the Queen, before the Queen herself at Westminster, on [Tuesday] the       day of       , in this same term, and for our said Lady the Queen giveth the court here to understand and be informed, That [*here state the facts and circumstances constituting the offence with the same certainty and precision as in an indictment, and in the same form, and according to the same rules, except that instead of saying "And the jurors aforesaid, upon their oath aforesaid, do further present that," &c., say, "And the said Coroner and Attorney of our said Lady the Queen, for our said Lady the Queen, further giveth the court here to understand and be informed, That," &c. ; which is also the form of the commencement of a second or subsequent count. Each count should conclude as an indictment, stating the offence to be* ["against the form of the statute, 'or statutes,' in such case made and provided, and] against the peace of our said Lady the Queen, her crown and dignity." *Conclude the information as follows:*] "Whereupon the said Coroner and Attorney of our said Lady the Queen, for our said Lady the Queen, prayeth the consideration of the \*Court here in the premises, and that due process of [\* 67] law may be awarded against him the said J. S. in this behalf, to make him answer to our said Lady the Queen touching and concerning the premises aforesaid."

(Signed) C. F. ROBINSON.

In 2 Hawk. P. C. c. 26, s. 4, it is said, "An information differs from an indictment in little more than this, that the one is found by the oath of twelve men, and the other is not so found; but is only the allegation of the officer who exhibits it; whatsoever certainty is requisite in an indictment, the same at least is necessary also in an information, and consequently, as all the material parts of the crime must be precisely found in the one, so must they be precisely alleged in the other, and not by way of argument or recital;" (and see *Rex v. Knight*, 1 Salk. 375; *Rex v. Read*, Sir T. Raym. 34, 1 Chit. Crim. L. 864.) An information was filed against the defendant for several illegal exactions in his office of clerk of the market, and there were several counts specifying sums taken of particular persons; upon all which distinct charges the defendant was acquitted; but at the close of the information there was a general charge, of which he was found guilty, viz. that, under colour of his said office, he did illegally cause his agent to demand and receive of *several other persons several other sums of money* on pretence of weighing and examining their several weights and measures; exception was taken that this is so general a charge that it is impossible any man can prepare to defend himself on this prosecution, or have the benefit of pleading it in bar to any other: and for this fault the judgment was arrested. (*Rex v. Robe*, 2 Stra. 999.) So, where a ferryman was charged with several acts of extortion, without alleging the persons, the cattle, or the quantity of goods in respect whereof the excessive remuneration was demanded, the court arrested the judgment after a verdict of guilty. (*Rex v. Roberts*, Carth. 226; 4 Mod. 102; Shower, 389; 3 Salk. 192, 201.)

\*An information was filed against several defendants for singing before the prosecutor's door two libellous songs, reflecting upon the [ \*68 ] honesty and virtue of his son and daughter, with intent to discredit him and his children, and to disturb their domestic peace and comfort. The defendants having been found guilty, the court upon motion in arrest of judgment, held, 1st, that the information was good, although for two distinct libels on two distinct individuals, for the singing the libels at the father's door, with the intent alleged, constituted one offence; 2nd, that several defendants might be joined, it being one *joint offence* by them all; 3rd, that the song reflecting upon the prosecutor's son was libellous; but if it had not been so, as that reflecting on the daughter clearly was libellous, the judgment could not be arrested, but a less punishment would have been awarded, proportioned to the defamation of the daughter only. (Rex v. Benfield, 2 Burr. 980.)

It is not necessary that each distinct sentence in a count should commence thus, "And the said Attorney-General [or, "and the said Coroner and Attorney,"] of our said Lady the Queen, for our said Lady the Queen further giveth the court here to understand and be informed, that," &c. It is generally sufficient to say, "And that." (Rex v. Read, Sir T. Raym. 34.)

By 7 Geo. 4, c. 64, intituled "An Act for improving the Administration of Criminal Justice in England," it is amongst other things enacted as follows:—Sect. 19. And for preventing abuses from dilatory pleas be it enacted, "that no indictment or information shall be abated by reason of any *dilatory plea of misnomer, or want of addition, or of wrong addition* of the party offering such plea, if the court shall be satisfied by affidavit or otherwise, of the truth of such plea; but in such case the court shall forthwith cause the indictment or information or to be amended according to the truth, and shall call upon such a party to plead thereto, and shall proceed as if no such dilatory plea had been pleaded." Sect. 20. And that the punishment of offenders \*may be less frequently intercepted in consequence of technical niceties, be it enacted, "that no judgment [ \*69 ] upon any indictment or information, for any felony or misdemeanor, *whether after verdict or outlawry, or by confession, default, or otherwise*, shall be stayed or reversed for want of the averment of any matter unnecessary to be proved, nor for the omission of the words 'as appears by the record;' or of the words 'with force and arms;' or of the words 'against the peace;' nor for the insertion of the words 'against the form of the statute,' instead of the words 'against the form of the statutes,' or *vice versa*; nor for, that any person or persons mentioned in the indictment or information is or are designated by a name of office, or other descriptive appellation, instead of his, her, or their proper name or names; nor for omitting to state the time at which the offence was committed, in any case where time is not of the essence of the offence; nor for stating the time imperfectly; nor for stating the offence to have been committed on a day subsequent to the finding of the indictment or exhibiting the information, or on an impossible day, or on a day that never happened; nor for want of a proper or perfect venue, where the court shall appear, by the indictment or information, to have had jurisdiction over the offence." Sect. 21 enacts, that no judgment *after verdict*, upon any indictment or information, for any felony or misdemeanor, shall

be stayed or reversed for want of a similiter; nor by reason that the jury process has been awarded to a wrong officer upon an insufficient suggestion; nor for any misnomer or misdescription of the officer returning such persons, or of any of the jurors; nor because any person has served upon the jury who has not been returned as a juror by the sheriff or other officer; and that where the offence charged has been created by any statute, or subject to a greater degree of punishment, or excluded from the benefit of clergy by any statute, the indictment or information shall after verdict, be held sufficient to warrant the punishment prescribed by the

[\*70] "statute, if it describe the offence in the words of the statute." A criminal information may be amended almost as a matter of course, (1 Chit. Crim. L. 868,) even after it has been demurred to for insufficiency, (Rex v. Holland, 4 T. R. 457,) or after the defendant has pleaded not guilty; and such application may be made to a judge at chambers, or at his private residence, upon a summons obtained for that purpose. (Rex v. Wilkes, 4 Burr. 2528; Id. 2532; Id. 2566; Id. 2568; Id. 2573, S. C.) For that reason the court will seldom if ever, *quash* an information on motion, but will leave the defendant to demur or plead to it as he may be advised. (Rex v. Nixon, 1 Stra. 185; Rex v. Gregory, 1 Salk. 372; Com. Dig. Information (D. 4.)) They will even refuse such an application by the Attorney-General, for he may enter a *nolle prosequi*, and file another information. (Rex v. Stratton, 1 Dougl. 239;) or he may move to amend. (Rex v. Holland, *supra*.)

The court have refused to strike out unnecessary counts in an *ex officio* information; but recommended an application to the Attorney-General for a summons on the prosecutor's attorney, to shew cause why they should not be struck out. (Rex v. Green, Cases temp. Hardwicke, 209.)

In Appendix A., Nos. 13 to 18, will be found precedents of various criminal informations by the Attorney-General *ex officio*, and by the Master of the Crown Office: also references to other precedents of a similar nature. Generally speaking, an information is in precisely the same form as an indictment, except the commencement and the conclusion, and that the facts are presented by way of information to the court, instead of upon the oath of a jury. So that any work may be referred to, containing precedents of indictments; for instance, Chitty's Criminal Law; The Crown Circuit Companion; Arch. Pl. & Ev. C. C. &c.

The draft information, having been prepared or settled by counsel, should be delivered to the prosecutor's clerk in court, who will cause it to [\*71] be engrossed on parchment. The prosecutor, or his solicitor, should take care to examine it carefully before it is filed, especially in libel cases. The prosecutor's clerk in court will then get the engrossment signed by the Master of the Crown Office. He then files it; and at the same time files the prosecutor's recognizance, taken pursuant to the stat. 4 & 5 W. & M. c. 18, as hereinafter mentioned.

*Ex officio* informations are merely signed by the Attorney-General, and then filed, without any rule of court or recognizance.

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## \*CHAPTER VI.

[\*72]

OF THE PROSECUTOR'S RECOGNIZANCE PURSUANT TO 4 & 5 W. & M. C. 18, AND THE MODE OF COMPELLING THE DEFENDANT TO APPEAR AND PLEAD TO THE INFORMATION.

IMMEDIATELY upon the rule being made absolute for a criminal information, the prosecutor's clerk in court (if so instructed) will prepare the necessary recognizance pursuant to the statute 4 & 5 W. & M. c. 18. (See the form, Appendix A., Nos. 11 & 12.) It must be entered into before the Clerk of the Crown, i. e. the Master of the Crown Office, or before a justice of the peace of the county, city, franchise, or town corporate where the cause of the information arose. The information itself may be filed either before or after the recognizance is entered into, but process thereon cannot issue until the information and recognizance are both filed; otherwise the defendant may move to set aside the process for irregularity. *Rex v. The Mayor and Aldermen of Hertford*, 1 Salk. 376; *Carth.* 503, S. C.; 2 Hawk. c. 26, ss. 8. 10; 1 Gude, 120.) The practice is always to file the recognizance before or at the same time as the information.

When the information and recognizance have been filed, upon a certificate thereof from the prosecutor's clerk in court, or an affidavit of the circumstances, a judge's warrant may be obtained, pursuant to 48 Geo. 3, c. 58, s. 1, for apprehending the defendant, and holding him to bail to appear and answer the charge. (See post, 75.) But, except in very special cases, it is more usual to proceed by way of subpœna.

The writ of subpœna is made out and issued by the \*prosecutor's clerk in court, upon his being instructed so to do by the prosecutor [\*73] or his solicitor. (See the form, Appendix A., No. 19.) The writ is made returnable on a day certain in term time, and a copy should be served on or before the return-day; but not later than the rising of the court on the return-day of the writ. The service need not be personal; leaving a copy of the writ, and indorsements thereon, at the defendant's residence, with some member of his family, or his servant (shewing the original), is sufficient. (1 Gude, 120.) An affidavit of service should be forthwith made. (See the form, Appendix A., Nos. 20 and 21.)

The defendant has four days after the return of the subpœna, exclusive of Sunday, to appear, (1 Chit. Crim. L. 865,) when an appearance for him must be entered by his clerk in court of the Crown Office. If such appearance be not entered, the prosecutor's clerk in court, upon being furnished with an affidavit of service of the writ of subpœna, will issue an attachment. (See the form, Appendix A., No. 22.) Such writ is executed by the the sheriff in the usual manner, and the defendant cannot be discharged out of custody until he has entered an appearance, when his clerk in court may issue a supersedeas. If the defendant cannot be taken upon the attachment, he may be proceeded against to outlawry, as after mentioned, p. 77.

If the defendant has undertaken (on enlarging the rule nisi) to appear to the information immediately on its being filed, it is not necessary to sue out

and serve a writ of subpœna; but upon the information and recognizance being filed, a notice should be served on the defendant, or his solicitor, stating, that the information is filed, and requiring the defendant to appear to it immediately, according to his undertaking, otherwise an attachment will be moved for against him. (See the form, Appendix A., No. 23.) If such notice be not complied with, then, upon affidavit of service thereof, and of the defendant's non-appearance, and upon production of the rule containing the defendant's undertaking, the court may be moved for an attachment [ \*74 ] against the defendant. Such attachment is in all respects \*similar to that issued after a subpœna, and is executed in the same manner.

If the defendant has undertaken (on enlarging the rule nisi) *to appear and plead immediately* to the information, in the event of the rule being made absolute, a notice should be served on him, or his solicitor, stating, that the information is filed, and requiring him to appear and plead thereto immediately; otherwise the prosecutor's clerk in court will enter an appearance for him, and proceed thereon to judgment and execution. (See the form, Appendix A., No. 24.) And if the defendant do not appear and plead accordingly, the prosecutor may, with leave of the court, enter an appearance, and sign judgment; but such application should not be made until after the expiration of a reasonable time for the defendant to appear and plead. (Reg. v. Muntz, H. T. 1838; 2 Jurist, 538.)

If the defendant is *in custody*, in respect of some other matter and does not enter an appearance, and the prosecutor is desirous of proceeding (although he is not compellable to do so,) he may cause the defendant to be brought into court, and "charged with the information" in manner following (that is to say):—The signature of counsel to a motion paper for a writ of habeas corpus must be obtained (fee 10s. 6d.), upon which the writ is issued by the prosecutor's clerk in court, directed to the sheriff or gaoler, requiring him to bring the defendant into court. The prosecutor's clerk in court must have the information in court when the defendant is brought up. Counsel must be instructed to move that the defendant may stand charged with the information (fee 10s. 6d.) Upon the defendant being brought into court upon the habeas corpus, he is charged with the information, which is then read to him, and he is asked whether he is guilty or not guilty. In most cases he pleads "not guilty," whereupon his plea is recorded, and he is remanded. Notice of trial, &c., may be served upon him immediately in the court, or afterwards in prison. If he plead "guilty," which sometimes [ \*75 ] happens, such plea is recorded, and he is remanded, and afterwards \*brought up for judgment in the same manner as after a judgment upon a verdict. Sometimes a defendant will crave further time to plead, which however rarely happens, as the only plea is, guilty or not guilty; but in such case he is remanded, and afterwards again brought up by another habeas corpus (or side-bar rule, if the defendant be detained in the Queen's Prison upon *that* prosecution,) when counsel must be again instructed to move (fee 10s. 6d.) that the defendant may plead, and he will then be compelled to plead guilty, or not guilty; otherwise judgment by default may be recorded.

By 48 Geo. 3, c. 58, s. 1, it is enacted, "That whenever any person shall be charged with any offence for which he or she may be prosecuted by indictment or information in his Majesty's Court of King's Bench, not

being treason or felony, and the same shall be made appear to any judge of the same court, by affidavit or by certificate, of an indictment or information being filed against such person in the said court for such offence, it shall and may be lawful for such judge to issue his warrant under his hand and seal, and thereby to cause such person to be apprehended and brought before him, or some other judge of the same court, or before some one of his Majesty's justices of the peace, in order to his or her being bound to the King's Majesty with two sufficient sureties, in such sum as in the said warrant shall be expressed, with condition to appear in the said court at the time mentioned in such warrant, and to answer to all and singular indictments or informations for any such offence; and in case any such person shall neglect or refuse to become bound as aforesaid, it shall be lawful for such judge or justice respectively to commit such person to the common goal of the county, city, or place where the offence shall have been committed, or where he or she shall have been apprehended, there to remain until he or she shall become bound as aforesaid, or shall be discharged by order of the said court in term time, or of one of the judges of the said court in vacation, and the recognizance to be thereupon taken shall be returned and filed in the said court, \*and shall continue in force until such person shall [ \*76 ] have been acquitted of such offence, or in case of conviction shall have received judgment for the same, unless sooner ordered by the said court to be discharged; and that where any person, either by virtue of such warrant of commitment as aforesaid, or by virtue of any writ of *capias ad respondendum* issued out of the said court, is now detained, or shall hereafter be committed to and detained in any gaol for want of bail, it shall be lawful for the prosecutor of such indictment or information to cause a copy thereof to be delivered to such person, or to the gaoler, keeper, or turnkey of the gaol wherein such person is, or shall be so detained, with a notice thereon indorsed, that unless such person shall, within eight days from the time of such delivery of a copy of the indictment or information as aforesaid, cause an appearance and also a plea or demurrer to be entered in the said court to such indictment or information, an appearance and a plea of 'not guilty' will be entered thereto in the name of such person; and in case he or she shall thereupon, for the said space of eight days after such delivery of a copy of the indictment or information as aforesaid, neglect to cause an appearance and also a plea or demurrer to be entered in the said court to such indictment or information, it shall be lawful for the prosecutor of such indictment or information, upon an affidavit being made and filed in the said court of the delivery of a copy of such indictment or information with such notice indorsed thereon as aforesaid to such person, or to such gaoler, keeper, or turnkey as the case may be, which affidavit may be made before any judge or commissioner of the said court authorized to take affidavits in the said court, to cause an appearance and the plea of 'not guilty' to be entered in the said court to such indictment or information for such person, and such proceedings shall be had thereupon as if the defendant in such indictment or information had appeared and pleaded not guilty, according to the usual course of the said court; and that if upon the trial of such indictment or information any defendant so committed and detained \*as aforesaid shall be acquitted of all the offences therein charged upon him [ \*77 ] or her, it shall be lawful for the judge before whom such trial shall be had,

although he may not be one of the judges of the said Court of King's Bench, to order that such defendant shall be forthwith discharged out of custody as to his or her commitment as aforesaid, and such defendant shall be thereupon discharged accordingly."

The provisions of the above statute, as to serving a copy of the information, &c., apply only where the defendant is taken into custody, or detained by virtue of a judge's warrant, or a *capias* issued in the particular prosecution. In such cases, if the defendant remain in custody for want of bail, it is not necessary to bring him into court upon a *habeas corpus*, and "charge him with the information" in manner before described: but a copy of the information may be delivered to the defendant in prison, or to the gaoler, keeper, or turnkey, with a notice to plead indorsed thereon, pursuant to the statute. (See the form, Appendix A., No. 26.) An affidavit of service thereof should then be made. (See the form, Appendix A., No. 27.) And if the defendant do not appear and plead within eight days, the prosecutor may cause an appearance and plea of not guilty to be entered for him, pursuant to the statute.

If the defendant abscond before an appearance is entered for him, and cannot be taken upon an attachment, he may be proceeded against to *outlawry*. The first process to be issued for that purpose is a *venire* to the sheriff, commanding him to summon the defendant to appear, returnable on the first day of the ensuing term; and upon the return of that writ non est inventus, a *capias* tested on the return of the *venire*, and returnable on the first day of the following term; and upon that writ being returned non est inventus, an alias *capias* tested on the return of the first *capias*, and returnable, on the first day of the following term; and upon that writ being returned non est inventus a pluries *capias* tested on the return of the alias *capias*, and returnable on the first day of the following term; and upon that writ being returned non est inventus, \*writs of *capias cum proclamatione* and [\*78] exigent must be issued; and between the teste and return of those writs (which need not be returnable in the following term) there must be five county courts; or if in London five *hustings* of pleas of land, at which the defendant must be exacted from time to time, and proclamation must also be made for the defendant according to the statutes, 31 Eliz. c. 3; 4 & 5 W. & M. c. 22, s. 4; and see 7 W. 4 & 1 Vic. c. 45. Upon the return of the *capias cum proclamatione* and exigent, the *outlawry* is complete. The clerk in court for the prosecutor makes out and issues each of the writs above mentioned and causes them to be inrolled, and delivers them to the prosecutor's solicitor, who lodges them with the sheriff, and afterwards obtains them back, when returned, and delivers them to his clerk in court. When the *outlawry* is complete, the prosecutor's clerk in court enters up judgment thereon, and prepares a draft of the proceedings for inrolment, (see the form in 2 Gude, 594. 599; *Rex v. Yandell*, 4 T. R. 521,) which is sometimes settled by counsel, as it is necessary to be scrupulously exact and strict in the whole of the proceedings, otherwise the *outlawry* may be reversed upon a writ of error. (*Rex v. Barrington*, 3 T. R. 499; *Rex v. Yandell*, 4 T. R. 521; *Rex v. Almon*, 5 T. R. 202.)

In *misdemeanors*, *outlawry* is generally a more severe punishment than would be inflicted for the crime of which the outlaw stands accused or convicted. It is a forfeiture of his goods and chattels, and all the profits of his real estate, and perpetual imprisonment, with many incapacities. If it is



erroneous, it cannot be reversed without a writ of error. (Per Lord Mansfield, C. J., in *Rex v. Wilkes*, 4 Burr. 2549.) A writ of error cannot be granted without the fiat of the Attorney-General, who will not grant it unless the defendant be *in custody*, though an apparently sufficient ground of error be specified to him, (S. C. p. 2531;) and in criminal cases the court will not reverse an outlawry, even by consent of the Attorney-General, for matter of *error in law*, unless satisfied that "there really is such error; \*79 ] but it is otherwise where the Attorney-General confesses an *error in fact*. (S. C. p. 2551.) "In *civil* actions an outlawry may be reversed, as, of course, upon the usual terms, even without any writ of error. The form of reversal always is, 'For the errors assigned, and *other* errors appearing upon the record,' although there is in truth no error at all," (per Lord Mansfield, C. J., S. C. p. 2549;) but it is otherwise in cases of misdemeanor.

After the completion of the outlawry, a writ of *capias utlagatum*, or special *capias utlagatum*, may at any time be issued, under which the defendant may be arrested, and his goods seized, and his lands extended, &c.

If a man be outlawed by process in an information, and comes in and reverses the outlawry, he must plead *instante* to the information. (*Rex v. Hill*, 1 Salk. 371; *Anon.*, 5 Mod. 141.)

*Time to Plead.*]—By 60 Geo. 3, & 1 Geo. 4, c. 4, intituled "An act to prevent Delay in the administration of Justice, in cases of Misdemeanor," it is enacted, sect. 1, "that where any person shall be prosecuted in his Majesty's Court of King's Bench at Westminster, or in his Majesty's Court of King's Bench in Dublin, respectively, for any misdemeanor, either by information or by indictment there found, or removed into the same respective courts, and shall appear in term time, in either of the said courts respectively, *in person*, to answer to such indictment or information, such defendant, upon being charged therewith, shall not be permitted to imparl to a following term, but shall be required to plead or demur thereto within four days from the time of his or her appearance; and in default of his or her pleading or demurring within four days as aforesaid, judgment may be entered against the defendant for want of a plea; and in case such defendant shall appear to such indictment or information *by his or her clerk or attorney in court*, it shall not be lawful for such defendant to imparl to a following term; but *a rule* \*requiring such defendant to plead may forthwith be given, [\*80 ] and a plea or demurrer to such indictment or information enforced, [ or judgment by default entered thereupon, in the same manner as might have been done before the passing of the act, in cases where the defendant had appeared to such indictment or information, by his or her clerk in court or attorney, in a previous term." Sect. 2 provides, "That it shall be lawful for the said respective courts, or for any judge of the same, respectively, upon sufficient cause shown for that purpose, to allow further time for such defendant to plead or demur to such indictment or information." Sect. 3 enacts, "That in all cases of prosecutions for misdemeanors, instituted by his Majesty's Attorney or Solicitor-General, in any of the courts aforesaid, the court shall, if required, make order that a copy of the information or indictment shall be delivered after appearance to the party prosecuted, or his clerk in court or attorney, upon application made for the same, free from all expense, to the party so applying; provided that such party or his clerk

in court, or attorney, shall not have previously received a copy thereof." Sect. 9 provides and enacts, "That in case any prosecution for a misdemeanor, instituted by his Majesty's Attorney or Solicitor-General in any of the courts aforesaid, shall not be brought to trial within twelve calendar months next after the plea of not guilty shall have been pleaded therein, it shall be lawful for the court in which such prosecution shall be depending, upon application to be made on the behalf of any defendant in such prosecution, of which application twenty days' previous notice shall have been given to his Majesty's Attorney or Solicitor-General, to make an order, if the said court shall see just cause so to do, authorizing such defendant to bring on the trial in such prosecution; and it shall thereupon be lawful for such defendant to bring on such trial accordingly, unless a nolle prosequi shall have been entered in such prosecution." Sect. 10 enacts, "That nothing in this act contained shall extend, or be construed to extend, to any prosecution by information in \*nature of a quo warranto, or for non-repair [\*81] of any bridge or highway."

From the above statute it will be perceived, that if the defendant appear *in person* to the information, he must plead or demur thereto, within four days after such appearance, without any rule to plead; but further time may be obtained upon application to the court or a judge. If he appear *by his clerk in court*, he is entitled to the usual rules to plead. The first rule may be given immediately after the appearance is entered. At the expiration of that rule (four days) a second rule to plead within four days may be given; and if that expire in term time, then, upon a motion paper signed by counsel (fee 10s. 6d.), a peremptory rule to plead may be obtained. In town cases, the peremptory rule expires in two days. In country cases, such rule expires in ten days: within which time the defendant must plead or demur, or obtain further time for that purpose, upon application to the court or a judge, otherwise judgment by default may be signed. (See the form of such judgment, Appendix A., No. 28.)

[\*82]

## \*CHAPTER VII.

OF DEFENCE AND PLEAS TO CRIMINAL INFORMATION:—1. JUDGMENT BY DEFAULT. 2. PLEAS IN ABATEMENT. 3. DEMURRERS AND PROCEEDINGS THEREON. 4. PLEA OF GUILTY. 5. PLEA OF NOT GUILTY.

THE defendant may either suffer judgment by default, or plead in abatement, or demur to the information, or plead "Guilty" or "Not Guilty;" but it seldom (if ever) happens that he can plead any thing else to a criminal information.

1. *Judgment by Default.*—If the defendant do not plead within the time allowed him for that purpose, (ante, 81,) judgment may be signed against him by default; and such judgment has precisely the same effect as where he pleads guilty, or a verdict is found against him upon a plea of

not guilty, and judgment signed thereon. (See the form of judgment by default, Appendix A., No. 28.)

If the defendant be advised to suffer judgment by default, or to plead guilty to an information, *during vacation*, he should previously apply to a judge at chambers (upon summons) for an order to stay execution until the fifth day of the following term, upon the defendant pleading guilty, or suffering judgment by default. This will sometimes be granted, and will prevent the defendant from being taken into custody during the vacation, upon a *capias pro fine*. But the prosecutor's solicitor may insist upon the defendant's entering into a recognizance, with bail for such amount as the judge shall think fit, conditioned for the defendant's appearance to receive judgment, in the ensuing term, when called on. (1 Gude, 92.)

After judgment by default has been signed, the \*defendant is usually taken into custody upon a *capias pro fine*, and brought into [\*83] court for his sentence, in the same manner as after judgment, upon a verdict of guilty. (See post, Ch. IX.) Upon such occasion the prosecutor's affidavits are first read, then the defendant's affidavits, then the prosecutor's counsel are heard, and lastly, the defendant's counsel. (Reg. M. T. 29 Geo. 3; Rex v. Bunts and Others, 2 T. R. 683.)

2. *Plea in Abatement*.—Formerly the defendant might plead in abatement if he was not rightly named, or not correctly described in the information, in like manner as he might so plead to an indictment. (Arch. Pl. & Ev. C. C. 29, 8th ed.; Id. 80, where see form of plea of misnomer.) But every plea in abatement is required to be verified by affidavit. And now by statute 7 Geo. 4, c. 64, s. 19, for preventing abuses from dilatory pleas, it is enacted, "That no indictment or information shall be abated by reason of any dilatory plea of *misnomer*, or *want of addition*, or of any *wrong addition* of the party offering such plea, if the court shall be satisfied by affidavit, or otherwise, of the truth of such plea; but in such case the court shall forthwith cause the indictment or information to be amended according to the truth, and shall call upon such party to plead thereto, and shall proceed as if no such dilatory plea had been pleaded;" so that, in effect, pleas in abatement are abolished.

3. *Demurrer*.—The defendant may demur to the information if it be defective, either in substance or form. By pleading over, many mere formal defects are cured by the statute 7 Geo. 4, c. 64, (ante, 68,) which, however, are still fatal upon demurrer. (Reg. v. W. Smith, 2 Moo. & Rob. 109; Reg. v. Law, 2 Moo. & Rob. 197.) And this is the only way in which technical or informal inaccuracies can be taken advantage of; for the court will very seldom (if ever) *quash* a criminal information, however defective it may appear to be. (Ante, 70.) But *substantial* defects in the information may be taken advantage of, not only by demurrer, but after verdict in arrest of judgment, or by writ \*of error. The advantage of a demurrer is, that it enables the defendant to take every *legal objection* [\*84] to the information, whether of substance or mere form, and it saves the expense and exposure of a trial at the assizes, and subsequent personal appearance at Westminster. The disadvantage is, that it conclusively admits the truth of the allegations contained in the information, and if decid-

ed against the defendant, the judgment upon it is as final as upon an express verdict of guilty. Moreover if the prosecutor's counsel, upon consideration of the demurrer, think the information defective, it may be *amended* almost as of course, upon application to the court, (Rex v. Holland, 4 T. R. 457.) or to a judge upon a summons returnable at his chambers or private residence. (Rex v. Wilkes, 4 Burr. 2528; Id. 2532; Id. 2566; Id. 2568; Id. 2572, S. C.: and see Rex v. Nixon, 1 Stra. 185; Reg. v. Norton, Fortescue, R. 232; Rex v. Harris, 1 Salk. 47.) So that a demurrer can seldom be successful, except where the prosecutor's counsel make some error in pleading which they do not think it necessary to amend when a demurrer is put in.

The stat. 4 & 5 Anne, c. 16, does not extend to demurrers in criminal cases, and therefore in no cases is it necessary to demur *specialty* to a criminal information. (See the form of a demurrer, and joinder, &c., Appendix A, No. 29.)

The rule of H. T., 4 Will. 4, which requires the grounds of demurrer to be stated in the margin, extends only to personal actions, in which the three superior courts of common law exercise concurrent jurisdiction. (Rex v. Woollett, 2 Cr., M. & R. 256; 5 Tyr. 786, S. C.) Therefore no marginal note is necessary on a demurrer to a criminal information.

The draft demurrer, as prepared and signed by counsel, is handed to the defendant's clerk in court, who makes a fair copy thereof, and delivers it to the clerk in court for the prosecutor. He also makes an office copy for the defendant. If it be term time, a side-bar rule, to join in \*demurrer within [\*85] four days, may then be entered by the defendant's clerk in court, and notice thereof given to the clerk in court for the prosecutor: at the expiration of that rule, a further peremptory rule may be obtained upon a motion paper for that purpose, signed by counsel, (fee 10s. 6d.) Such rule expires in two days; and if within that time the prosecutor do not join in demurrer, or obtain further time for that purpose upon application to the court or a judge, judgment for want of a joinder in demurrer may be signed by the defendant's clerk in court. (1 Gude, 93.)

If the demurrer be filed in vacation, one rule of the preceding term is sufficient, (1 Gude, 93, 94,) which is a peremptory rule of four days. A copy of the demurrer is served or left, by the defendant's clerk in court, with the clerk in court for the prosecutor, indorsed "To join in demurrer within four days, or judgment. Dated," &c. And on the expiration of such four days, the defendant's clerk in court will sign judgment for want of a joinder in demurrer, unless one be then filed, or a judge's order for further time obtained.

The prosecutor usually obtains an order to amend, (ante, 84,) or joins in demurrer. (See the form of joinder in demurrer, Appendix A, No. 29.) It is generally prepared and signed by counsel, and then delivered to the prosecutor's clerk in court, who makes a fair copy for the defendant, and an office copy for the prosecutor, or his solicitor.

Either party may then move for a concilium. The motion paper is indorsed, "The Queen against J. S. To move for a concilium," (fee 10s. 6d.) This, when signed by counsel, is taken to the clerk of the rules in the Crown Office who enters a rule for a concilium, (which is not formally drawn up,) and sets the demurrer down in the crown paper for argument. Notice thereof should be thereupon immediately given to the clerk in

court, or solicitor, for the other side. The clerk in court for each party then makes an office copy of the demurrer book, \*which he sends to his own client : he also makes two copies for the judges. The clerk in [ \*86 ] court for the prosecutor delivers his two copies to the two senior judges ; and the clerk in court for the defendant delivers his two copies to the two puisne judges. The points of law intended to be argued must be stated by each party in the margin of his copy demurrer books, and copies of such points must also be delivered to the two other judges, or written in the margin of the copy demurrer books delivered to them by the opposite party. The demurrer books, &c., must be so delivered at least two days before the day appointed for the argument. (1 Gude, 95.) The solicitor for each party prepares a brief, and instructs counsel. Queen's counsel cannot argue on behalf of the defendant, without a special license from the crown for that purpose, which license must actually be obtained (and not merely a certificate of the fees paid) before the case comes on for argument, (Reg. v. Jones, 9 C. & P. 401 ; ) although such certificate will be sufficient to induce the counsel to accept the brief. The crown paper must then be carefully watched from time to time. It is taken *every Wednesday and Saturday* in term time, except the first four and the last four days of term. When the case is called on, counsel for the defendant in support of the demurrer is first heard ; then the counsel on the other side ; and then counsel for the defendant replies. Only one counsel can be heard on each side, but in important cases a second counsel is sometimes employed " to take notes," and make suggestions during the argument. The defendant need not be present during the argument. The court, after hearing counsel on both sides, as above mentioned, either then give judgment or take time to consider ; and ultimately decide that the information is or is not sufficient in law : whereupon a rule is drawn up by the clerk of the rules, and judgment signed thereon by the clerk in court for the successful party. (1 Gude, 95.) After which, if the judgment be against the defendant, he is brought up to receive his sentence in the same manner as after judgment upon a verdict \*of guilty. (See post, Ch. IX.) For the form of judgment [ \*87 ] upon demurrer, either for the defendant or for the crown, see Appendix A, No. 29.

4. *Plea of Guilty.*—This, when recorded, has precisely the same effect as a conviction of the offence. The proceedings upon it are the same as where the defendant suffers judgment by default. (Ante, 82.) The defendant's clerk in court prepares the plea, and it need not be signed by counsel.

5. *Plea of Not Guilty.*—This is the most usual plea to a criminal information. (See the form, Appendix A., No. 30.) It need not be signed by counsel. The effect of it is to put in issue each and every material fact alleged in the information, and to let in the defendant to make any defence upon the merits.

In libel cases, the defendant cannot plead *the truth* of the imputations as a justification, for that is clearly no defence to a criminal information, although it will afford a very good answer to *an application for one*. So,

in cases of assault, battery, &c., the defendant cannot plead a justification.

The pendency of an indictment or information for a crime cannot be pleaded to another for the same offence, as it may to an information for penalties. (Per Buller, J., in *Rex v. Stratton*, Dougl. 240. But where the Attorney-General filed an *ex officio* information, after a criminal information had been granted for the same offence at the instance of a private prosecutor, the court stayed all proceedings upon the first information until further order. (*Rex v. Alexander*, E. T. 1830; Arch. Pl. & Ev. C. C. 76, 8th ed.; Id. 70, S. C.)

[\*88]

## \* CHAPTER VIII.

OF THE ISSUE AND SUBSEQUENT PROCEEDINGS TO THE TRIAL INCLUSIVE:  
AND HEREIN OF THE ISSUE—NOTICE OF TRIAL—RECORD AND JURY—  
PROCESS—WARRANT OF NISI PRIUS—SPECIAL JURY—WARRANT FOR A  
TALES—SUBPENAS—BRIEFS—LICENSE FOR QUEEN'S COUNSEL TO APPEAR  
FOR THE DEFENDANT—THE EVIDENCE—TRIAL—AMENDMENTS UNDER 9  
GEO. 4, C. 15—VERDICT—JUDGE'S CERTIFICATE UNDER 4 & 5 W. & M.  
C. 18—COSTS.

UPON the defendant pleading not guilty, the clerk in court for the prosecutor (if so instructed) will add the similiter, and make up the issue. (See the form, Appendix A., Nos. 31, 32.) He will deliver a fair copy thereof to the defendant's clerk in court, with notice of trial indorsed. He will also make an office copy of the issue for the prosecutor or his solicitor.

If the trial is to be had in London or Middlesex, and the defendant resides within forty miles of London, eight days' notice is sufficient; if above forty miles, then fourteen days. Ten days' notice of trial is sufficient for the assizes, (14 Geo. 2, c. 17, s. 1.)

If the prosecutor do not proceed to trial within twelve calendar months after the defendant has pleaded not guilty, he will be liable to costs under his recognizance, taken pursuant to the statute of 4 & 5 W. & M. c. 18, to the extent of £20, but no further. (*Rex v. Morgan*, 2 Stra. 1042; *Rex v. Howell*, Cases temp. Hardwicke, 247; *Rex v. Filewood*, 2 T. R. 145; *Rex v. Brooke and Others*, 2 T. R. 190.)

And where the Attorney-General, or Solicitor-General, prosecutes *ex officio*, the defendant may, after the expiration of twelve calendar months from the time of his \*pleading not guilty, proceed according to the  
[\*89] statute 60 Geo. 3 & 1 Geo. 4, c. 4, s. 9, (ante, 80,) and so himself take the case down for trial; but he cannot try it by proviso in the ordinary way. (*Rex v. Macleod*, 2 East, 202.)

The record and jury process are prepared by the prosecutor's clerk in court. (See the forms, Appendix A., Nos. 33, 34, 35.) He will also obtain

the Attorney-General's warrant of *nisi prius*. (See the form, Appendix A., No. 36.) He also gets the *venire facias* returned: the *distringas* is usually returned at the assizes.

Either party may move for a special jury. (6 Geo. 4, c. 50, s. 30.) The rule is drawn up on a motion paper, indorsed "In the Queen's Bench: The Queen v. J. S. On behalf of the [prosecutor,] to move for a special jury" (fee 10*s.* 6*d.*) Upon this being signed by counsel, and taken to the clerk of the rules in the Crown Office, he will draw up the rule: upon which an appointment to nominate the jury may be obtained from the Master of the Crown Office. A copy of the rule and appointment should then be served on the solicitor for the opposite party; also on the sheriff, his undersheriff, or deputy. If the parties do not attend the first appointment, after waiting half an hour a second appointment may be obtained, and notice thereof served as before. Such second appointment is *peremptory*.

At the time appointed, the sheriff's agent, and the solicitor on each side, attend the Master, who extracts indiscriminately, from the freeholders' book, forty-eight names of persons, with their descriptions; and each party is furnished, by the Secondary of the Crown Office, with a copy of the list of forty-eight so nominated. No time should be lost in communicating with the solicitor's agents in the country, and obtaining their instructions as to the names to be struck out: *above a dozen* names should be furnished, because, perhaps, some of those intended to be struck out on your behalf may be struck out by the other side; and if only a dozen names be supplied, after they are all struck out, you may, perhaps, be striking out the names of the \*desirable jurymen. The order in which the names [ \*90 ] are to be struck out should be specified by numbers or otherwise, so that the most obnoxious may be first struck out.

When the solicitors are prepared, and instructed to reduce the list, an appointment for that purpose will be made by the Master of the Crown Office, which is served upon the opposite solicitor, in the same way as the appointment to nominate; but not upon the sheriff or his agent. On attending such appointment, the Master of the Crown Office calls upon the prosecutor's solicitor to strike out a name; then upon the defendant's solicitor; and so alternately, until the list of forty-eight is reduced to twenty-four. If either party fail to attend a *peremptory* appointment, the Master of the Crown Office will strike out twelve names on his behalf. Should the trial not happen to take place at the ensuing assizes or sittings, no other jury can be nominated; but the cause must be tried by those so appointed as above mentioned. (Rex v. Perry and Others, 5 T. R. 453; Wilson v. Bulter, 2 Moo. & Rob. 78.) The clerk in court, for the party at whose instance the special jury was nominated, will make out and issue a special writ of *distringas*. (See the form, Appendix A., No. 35.) He will also procure the Attorney-General's warrant for a *tales*, (see the form, Appendix A., No. 37;) without which the cause could not be tried, unless a full special jury should happen to appear. Both parties usually obtain the Attorney-General's warrant for a *tales*, which is granted to each nearly as a matter of course, upon payment of 8*s.* 8*d.* But when the prosecution is *ex officio* by the Attorney-General, he usually refuses the defendant a warrant for a *tales*. (1 Gude, 100; 2 Id. 688.)

Subpœnas ad testificandum and subpœnas duces tecum may be issued by the clerks in court on either side. (See the forms, Appendix A., Nos. 38, 39.) They are served in the same manner as in civil actions.

The solicitors for the respective parties prepare briefs for counsel, containing a copy of the pleadings—a statement of the case and evidence. If [ \*91 ] the defendant wish to have the \*assistance of Queen's counsel, a petition to the Queen for a special license must be prepared. (See the form, Appendix A., No. 40.) Such petition must be lodged at the office of the Secretary of State for the Home Department, in the Treasury. The necessary license is usually obtained in a few days afterwards. (See the form Appendix A., No. 41.) If any delay is likely to arise in procuring the Queen's signature to the license, a certificate of the fees being paid (about nine guineas) may be obtained, which will be sufficient to satisfy counsel that the application has been made and granted. (1 Gude, 101.) But the license itself must be actually procured before the court will permit Queen's counsel to appear on behalf of the defendant. (Reg. v. Jones, 9 C. & P. 401.)

The record and jury process, with panels annexed, are lodged with the judge's associate or marshal, and the case entered for trial at the assizes, &c., as in other cases.

The trial takes place on the *civil* side of the court. The jury are called and sworn in the usual manner. If a full special jury do not appear, neither party can pray a tales, without the Attorney-General's warrant for that purpose. (Ante, 90.) When the jury are sworn, public proclamation is made in court to this effect; viz., that if there be any one who will inform the Queen's Justices (or Chief Justice,) the Queen's Serjeant-at-Law, the Queen's Attorney-General, or the jury, concerning the matters stated in the information, let him come forth, and he shall be heard. Counsel for the prosecution thereupon appear, and state the facts of the case, and then proceed to call witnesses.

The evidence is precisely the same as upon an indictment for a similar offence, and therefore the following works may be consulted:—viz., Arch. Pl. & Ev. C. C.; Roscoe's Evidence, C. C., and other books of a similar nature. It should, however, be observed, that upon the trial of a criminal information, the only thing to be inquired into is, *the fact which constitutes the offence*. Matters of extenuation or aggravation are never entered into [ \*92 ] at that time; \*neither party can be allowed to do so; but all matters in aggravation or extenuation of the offence are laid before the court by affidavit, when the defendant is called up for judgment. (Rex v. Sharpness, 1 T. R. 228; see post, Ch. IX.)

By 9 Geo. 4, c. 15, intituled "An Act to prevent a failure of Justice by reason of Variances between Records and Writings produced in Evidence in support thereof;" after reciting that whereas great expense is often incurred, and delay or failure of justice takes place at trials by reason of variances between writings produced in evidence, and the recital or setting forth thereof upon the record on which the trial is had, in matters not material to the merits of the case, and such record cannot now in any case be amended at the trial, and in some cases cannot be amended at any time, it is enacted, "That it shall and may be lawful for every court of record, holding plea in civil actions, any judge sitting at nisi prius, any court of



oyer and terminer and general gaol delivery, in England, Wales, the town of Berwick-upon-Tweed, and Ireland, if such judge or court shall think fit so to do, to cause the record on which any trial may be pending before any such judge or court in any civil action, or in any indictment or *information for any misdemeanor*, when any variance shall appear between any matter in writing or in print, produced in evidence, and the recital or setting forth thereof upon the record where the trial is pending, to be forthwith amended in such particular, by some officer of the court, on payment of such costs (if any) to the other party as such judge or court shall think reasonable, and and thereupon the trial shall proceed as if no such variance had appeared; and in case such trial shall be had at nisi prius, the order for the amendment shall be indorsed on the *postea* and returned together with the record; and thereupon the papers, rolls, and other records of the court from which such record issued shall be amended accordingly."

The subsequent statute 3 & 4 W. 4, c. 42, s. 23, (allowing more extensive amendments at the trial,) does not \*extend to criminal informations, being expressly confined to civil actions, informations in the [\*93] nature of a *quo warranto*, and proceedings upon a *mandamus*.

In cases where the Attorney-General prosecutes *ex officio*, he is always entitled to the reply, although no evidence be called by the defendant. (*Rex v. Marsden*, Moo. & Mal. 439.) But where the Attorney-General appears in support of a criminal information on behalf of a private prosecutor, he does not reply, unless the defendant call witnesses. (*Rex v. Bell*, Moo. & Mal. 440.) In other respects the case is tried precisely in the same manner as an ordinary cause.

In the event of the defendant being found *not guilty*, the stat. 4 & 5 W. & M. c. 18, authorizes the judge before whom the information is tried in open court to certify upon record that there was a reasonable cause for exhibiting the information, so as to deprive the defendant of any part of his costs of defence. But such statute does not apply where the trial is had at bar. (2 Hawk. c. 26, s. 11; *Reg. v. Clerk*, 7 Mod. 47; 1 Chit. Crim. L. 872.) If one of several defendants be found guilty, the others cannot have costs within the above statute. (2 Hawk. c. 26, s. 12; *Reg. v. Danvers and Others*, 1 Salk. 194.) The judge's certificate must be entered on the *postea*. (Comb. 345; Com. Dig. tit. Information, A. 2.) Where the judge does not certify, the court is *bound* to award the defendant his costs whether the acquittal was upon the merits, or only from a slip in point of form, and however notorious the offence may be. (2 Hawk. c. 26, s. 13; 2 Stra. 1131; Com. Dig. tit. Information, A. 2.) But the prosecutor is in no case liable to the defendant's costs to a greater amount than 20*l.*, however much they may exceed that sum. (*Rex v. Filewood*, 2 T. R. 145; 1 Gude, 123; 1 Chit. Crim. L. 873.) If the information was exhibited by the Attorney-General *ex officio*, the defendant (although acquitted) is not entitled to any costs, as the crown never receives or pays costs. (Hullock, 557.)

In the event of the defendant being found guilty, the judge at nisi prius may *order him into custody forthwith*, if \*the defendant [\*94] happen to be in court at the time of the trial, which, however, is not necessary, (1 Gude, 101,) and, generally speaking, not expedient, for the reason above mentioned. If the defendant be not personally present at the

trial, the judge may, if he think fit, upon a clerk in court's certificate of the conviction, *issue his warrant* for the apprehension of the defendant, to secure his appearance in court at the commencement of the ensuing term. (See the forms of Certificate and Warrant, Appendix A., Nos. 45 & 46.) But neither of the above courses is usually pursued except in gross cases, where imprisonment will certainly form part of the punishment, or the defendant is likely to abscond; and such intermediate imprisonment as the defendant may thereby actually suffer will afterwards be taken into consideration by the court at the time of passing sentence upon him, when a proportionably less imprisonment will be awarded.

[\*95]

## CHAPTER IX.

PROCEEDINGS SUBSEQUENT TO THE TRIAL, VIZ. POSTEA—RULE FOR JUDGMENT—MOTION FOR A NEW TRIAL, OR IN ARREST OF JUDGMENT—PERSONAL APPEARANCE OF ALL THE DEFENDANTS ON SUCH MOTION—INTERLOCUTORY JUDGMENT—CAPIAS PRO FINE—PROCEEDINGS TO OUT-LAWRY—PERSONAL APPEARANCE OF THE DEFENDANTS TO RECEIVE THEIR SENTENCE—WHEN DISPENSED WITH—PRACTICE WHEN THE DEFENDANTS ARE CALLED UP FOR JUDGMENT—REG. M. T. 29 GEO. 3—AFFIDAVITS IN AGGRAVATION AND MITIGATION—THE SENTENCE—FINAL JUDGMENT—APPLICATION FOR A PORTION OF THE FINE TOWARDS THE PROSECUTOR'S COSTS.

At the commencement of the term next after the trial, the *postea* may be obtained by the prosecutor's solicitor (if the defendants be found guilty) from the associate or clerk of assize. (See the form, Appendix A., Nos. 42 & 43.) Upon its being taken to the clerk of the rules in the Crown Office, he will enter the usual four-day rule for judgment; at the expiration of which rule interlocutory judgment may be signed, unless in the meantime the defendants have obtained a rule *nisi* for a new trial, or in arrest of judgment.

At any time before interlocutory judgment has been actually signed as above mentioned, the defendants or any of them may move for a new trial, but not afterwards. (*Rex v. Armstrong*, 2 Stra. 1102; *Rex v. Pollard*, 8 Mod. 264.) But the court will take *upon itself* to grant a new trial at a later period, if it appear to them that the ends of justice so require, although not upon the application of the defendants. (*Rex v. Gough*, Dougl. 766; *Rex v. Holt*, 5 T. R. 436; *Rex v. Teal and Others*, 11 East, 307; *Rex v. Askew and Others*, 3 M. & S. 9.)

The defendants or any of them may, within the time above limited, move for a rule *nisi* in the alternative, viz. \*in arrest of judgment, or for a new trial. But if the application be only to arrest the judgment, it may be made at any time before sentence is actually passed upon the defendants, notwithstanding interlocutory judgment has been signed. (1

Gude 103.) The court indeed will refuse to pass any sentence upon a defendant, if satisfied that in point of law the judgment ought to be arrested, and that although the defendant expressly declines moving in arrest of judgment. (Rex v. Waddington, 1 East, 146.) But it should be remembered, that many mere technical objections are cured by 7 Geo. 4, c. 64. (Ante, 68.)

Upon a motion for a new trial, or in arrest of judgment, the defendant must be *personally present* in court; for the verdict fixes upon him such a presumption of guilt, that the court will make sure of him before they intimate any opinion. (Rex v. Gibson, 2 Stra. 968.) And where several defendants have been convicted, the court will not listen to an application for a new trial on behalf of any of them, unless *all* the defendants who have been found guilty are personally present; otherwise the most culpable might keep out of the way, and put forward the least guilty to try the result of a motion for a new trial. (Rex v. Askew and others, 3 M. & S. 9; Rex v. Lord Cochrane, Id. 10, note; Rex v. Teal and Others, 11 East, 307.) And it seems that the court will not dispense with the personal appearance of the defendants, even with the consent of the prosecutor's counsel. (1 Gude, 103.) But where one of several defendants applies for a new trial within the four days, and the application is refused because of the non-appearance of the other defendants, the court will afterwards bear it in mind, and will, if necessary for the ends of justice, take upon themselves to grant a new trial, when the defendants are called up for judgment. (Rex v. Teal, 11 East, 307; Rex v. Askew, 3 M. & S. 9.)

Upon a motion in arrest of judgment *all* the defendants must be personally present. (Rex v. Spragg and Others, 2 Burr. 930. But see Rex v. De Berenger and others, 3 M. & S. 67.)

\*If upon the defendants' personal appearance upon a motion for a new trial, or in arrest of judgment, the court refuse the application, [ \*97 ] or take time to consider it, the defendants must be committed to custody, unless indeed the prosecutor will *expressly consent* to their remaining out on bail. (Rex v. Waddington, 1 East, 159.)

Supposing the defendants not to move for a new trial, then at the expiration of the four-day rule for judgment an interlocutory judgment may be signed, viz. "that the defendants be taken to satisfy our said Lady the Queen on account of the premises aforesaid." Upon this judgment being signed the prosecutor's clerk in court will issue a *capias pro fine*. (See the form, Appendix A., No. 47.) This is executed by the sheriff in the usual manner. When a defendant is arrested by the sheriff upon a *capias pro fine*, he is taken to the prison of the county, and there remains until the prosecutor, or the defendant himself, in term time, obtains upon motion (see 10s. 6d.) a writ of *habeas corpus* directed to the sheriff, to have the defendant in court at Westminster to receive judgment. (1 Gude, 152.) When brought into court the defendant is committed to the custody of the marshal, unless the prosecutor expressly consent to his being bailed. "If a person convicted be taken upon a *capias pro fine*, he is liable to be committed unless the prosecutor consents to his being bailed. This is the common course of proceeding, though it is usual to admit to bail upon the prosecutor's consenting to it. In the case of the journeymen tailors, and again in that of the weavers, the defendants were by consent bailed, and by consent were

not to appear till called upon; but I do not remember any case where such a person has been bailed *without consent*. When a person so convicted is committed, such commitment shall be taken into consideration by the court, when they come to pronounce their sentence upon him, and shall go as part of his punishment." (Per Lord Mansfield, C. J., in *Rex v. Wilkes*, 4 Burr. 2539; *Id.* 2545; *Id.* 2574, S. C.) In a subsequent case, a defendant [\*98] having been convicted and \*brought up for judgment, the court, after hearing an elaborate argument to shew that no offence had been committed, took time to consider their judgment. A question then arose whether the defendant should stand committed, the prosecutor's counsel saying that they should not interfere but let the usual course take place, and the defendant's counsel praying he might be bailed; but Lord Kenyon said that unless the prosecutor *consented* to the defendant's remaining out on bail, it was a matter absolutely of course that he should be committed; the court had no discretion to exercise, and the practice was too well settled to admit of argument. (*Rex v. Waddington*, 1 East, 159.)

If a defendant cannot be taken upon a *capias pro fine*, he may be proceeded against to outlawry. This a rather quick proceeding after judgment, although a tedious one on mesne process. Upon the writ of *capias pro fine* being returned *non est inventus*, a writ of *exigi facias* may be issued, upon which the defendant is *exacted* five times at so many distinct county courts. (*Rex v. Perry*, 6 T. R. 573.) Or at five hustings of pleas of land in London. (1 Gude, 261.) No writ of proclamation is necessary. (*Rex v. Wilkes*, 4 Burr. 2559.) The defendant may render himself into custody at any time before the writ of exigent is made returnable, and he will thereupon be committed. (*Rex v. Ward*, 2 Lord Raym. 1462.) But upon a return of his being exacted five times without surrendering himself the outlawry is complete. The return itself concludes thus: "Therefore, by the judgment of A. B., Esq., and C. D., Esq., her Majesty's coroners for the said county of —, the said J. S. according to the law and custom of England is outlawed." (See the form in *Rex v. Perry*, 6 T. R. 573; *Rex v. Wilkes*, 4 Burr. 2535.)

Upon the outlawry being completed, the prosecutor's clerk in court may issue writs of *capias utlagatum*, or special *capias utlagatum*, under which the defendant may be taken, and his goods seized, and his lands extended, &c. We have already seen that outlawry in cases of misdemeanor is generally [\*99] a more severe punishment than would \*be inflicted for the offence (whatever it may be) of which the defendant stands convicted. (Ante, 78.) For, supposing the defendant to abscond, and to have no real or personal property, he is in effect *banished for life*; if ever he comes back to this country he may be arrested as an outlaw, and if he have any goods or chattels, they may be seized on behalf of the Queen and will not afterwards be restored. (*Rex v. Hornby*, 5 Mod. 61.) Nor is it very easy to reverse an outlawry in cases of misdemeanor, for a writ of error cannot issue without the fiat of the attorney-general, which will not be granted unless he be satisfied that the defendant is actually in custody under a *capias utlagatum*, (*Rex v. Wilkes*, 4 Burr. 2531,) and that there probably is real error, as appears by a copy of the proceedings with counsel's certificate laid before him. Nor will the court permit the outlawry to be reversed for *error in law*, even with the consent of the attorney-general,

unless satisfied that such error really does exist, although it is otherwise where the attorney-general chooses to confess an *error in fact*. (S. C., p. 2551.) Where the proceedings to outlawry are strictly regular and correct in every respect, the outlawry cannot be got rid of except by the *Queen's pardon*, or by the attorney-general confessing an *error in fact*, which he will not do without special authority from the Crown. It is, however, clearly settled that where the defendant in a criminal information is found guilty, and absconds, and is proceeded against to outlawry, no judgment can be pronounced upon the conviction until the outlawry be reversed or set aside. (Rex v. Wilkes, 4 Burr. 2532.) For while that lasts the defendant is liable to imprisonment *for life*, and he cannot have any real or personal property wherewith to pay a fine, for all such property is already forfeited to the Crown.

In Rex v. Wilkes, 4 Burr. 2527, the defendant having been found guilty upon an *ex officio* information preferred against him for a seditious libel, a *capias pro fine* issued, and upon non est inventus being returned to that writ he was proceeded against to outlawry. He afterwards appeared in court voluntarily. The attorney-general prayed that he *\*might* stand committed: on the other hand, the defendant prayed that he [\*100] might be admitted to bail, as he intended to bring a writ of error to reverse the outlawry. But per Lord Mansfield, C. J. (p. 2531):—"Here are two motions made upon the defendant's appearing personally in court, one for *committing* him, the other for *bailing* him. I am of opinion against both these motions. He ought to be brought in regularly upon a return of the *capias* by the sheriff. I have no doubt but that we *might* take notice of him, upon his voluntary appearance as the person outlawed, and commit or bail him; but we are not absolutely bound to do it, without some reason to excuse the going out of the regular course. If the defendant could shew that the attorney-general *refused* to take him up and bring him into court, *in order to prevent his having this advantage*; or if the attorney-general had in fact used all methods to take him up, and he had concealed himself, and absconded, and afterwards had come in thus voluntarily *in order to surprise*; upon either of these, or any other extraordinary ground, we should be bound to interpose and overlook the impropriety of the defendant's *coming*, instead of being *brought*, into court."

Where the defendant is willing to appear to receive judgment, and it is not wished to put him to the annoyance of an arrest upon a *capias pro fine*, the prosecutor, or his solicitor, may give him notice to appear to receive sentence. (See the form, Appendix A., No. 49.) Where the defendant is under recognizance, such notice should be served on him and his bail, and an affidavit of service made. Sometimes the defendant himself gives notice of his intention to appear and receive judgment. (See the form, Appendix A., No. 50.)

The court will not dispense with the *personal appearance* of the defendants at the time when judgment is to be passed upon them, except in cases where it is *quite clear and certain that the punishment will not be corporal, but only pecuniary*; in which latter case the court will sometimes be content with the undertaking of their clerk in court to answer for *\*the fine*, if the defendants be very aged, or infirm, or in bad health [\*101] and reside at a distance. In Rex v. Hann & Another, 3 Burr. 1786, the

defendants having pleaded guilty to a criminal information, charging them with having misconducted themselves as magistrates, in improperly refusing an ale-house license from pique and resentment, owing to political motives, the court refused an application at their instance for a rule to dispense with the personal appearance of the defendants, on the undertaking of their clerk in court to answer for their fines; and the report states, that "the general doctrine laid down by the court, and agreed by the counsel on both sides, was, that though such a motion was subject to the discretion of the court, either to grant or refuse it, where it was clear and certain that the punishment would not be corporal, yet it ought to be denied in every case where it was either probable or possible that the punishment would be corporal. And, though the court did not then declare what punishment they would inflict upon the present defendants, yet they saw the offence in so atrocious a light as to be far from determining that it would be only pecuniary; and Mr. Justice Wilmot and Mr. Justice Aston thought, that even where the punishment would most probably be only pecuniary, yet in offences of a very gross and public nature, (as they held this to be,) the persons convicted should appear in person, *for the sake of example and prevention* of the like offences being committed by other persons, as the notoriety of their being called up to answer criminally for such offences would very much conduce to deter others from venturing to commit the like. On a subsequent occasion, the defendants in that case appeared personally, when the court sentenced them each to one month's imprisonment and a fine of £50. (3 Burr. 1787, S. C.)

A motion to dispense with the personal appearance of the defendants must be supported by affidavit, shewing the special circumstances. It must be made early in term. The court will sometimes direct the rule nisi to be served on the prosecutor's agent; and if no cause be shewn, the rule [\*102] will be made absolute upon the defendant's solicitor or \*clerk in court personally undertaking to pay, on behalf of the defendants, such fine as may be imposed upon them by the court. (1 Gude, 107.)

The *personal appearance of the defendants in court to receive their sentence* being secured, or specially dispensed with, as before mentioned, the prosecutor's solicitor should instruct counsel to move for judgment on the defendants. For that purpose affidavits "in aggravation" are prepared, and briefs thereof made. Such affidavits should state all the special circumstances connected with the offence. A notice is also served upon the defendants, and their bail (if any), requiring the defendants to appear and receive judgment. (See the form, Appendix A., No. 49.) The judge's notes should be bespoken if there has been a trial, and the prosecutor's clerk in court must prepare an abstract or copy of the information for the senior puisne judge. The defendants prepare affidavits in "mitigation," and usually instruct counsel on their behalf. Neither party furnishes his opponent with any copy of his affidavits made in aggravation or in mitigation.

Affidavits to be used either in aggravation or mitigation should be intitled, "In the Queen's Bench, The Queen against J. S." But the court have permitted to be read in aggravation, after judgment by default, an affidavit intitled merely "In the Queen's Bench," upon which the attorney-general

had filed the information *ex officio*. (*Rex v. Morgan*, 11 East, 457: and see *Rex v. Jolliffe*, 4 T. R. 285-6.)

In Michaelmas term, 29 Geo. 3, the court resolved to adopt the following rules: viz. "When any defendant shall be brought up for sentence on any indictment or information *after verdict*, the affidavits produced on the part of the defendant, if any such be produced, shall be first read, and then any affidavits produced on the part of the prosecution shall be read; after which the counsel for the defendant shall be heard, and lastly the counsel for the prosecution."

"And when any defendant shall be brought up for sentence after judgment *by default*, the prosecutor's affidavits \*shall be first read, then the defendant's affidavits; after which the counsel for the pro- [\*103] secution shall be heard, and lastly the counsel for the defendants.

"If no affidavits shall be produced, the counsel for the defendant shall be first heard, and then the counsel for the prosecution." (See *Rex v. Bunts and Others*, 2 T. R. 683.)

When a defendant in a criminal prosecution is brought up for judgment, each party should come prepared with affidavits disclosing his own case (if he mean to produce any affidavit at all.) But if, in the course of the inquiry, *the court* wish to have any point further explained, they will give the defendant an opportunity of answering it on a future day. (*Rex v. Wilson and Others*, 4 T. R. 487.) This will sometimes be done at the instance of the defendant (for he is in the meantime committed to custody,) especially if the matter urged in aggravation be misconduct of the defendant subsequent to his conviction. (*Rex v. Sharpness*, 1 T. R. 228; *Rex v. Archer*, 2 T. R. 203, note.) But "it is not the practice in general to give the defendant an opportunity of answering at a future time the affidavits produced by the prosecutor. When a defendant is brought up for judgment the only object which the court have in view is to discover the real truth of the transaction; and it is much more probable that that object will be attained by the practice which has hitherto prevailed, which requires that each party should come prepared to disclose all the circumstances of his case, than by a contrary practice, which would prove a source of infinite perjury. In the case of *The King v. Archer*, 2 T. R. 203, note, where the prosecutor produced affidavits in aggravation, to shew a continuation of the defendant's malice by expressions used subsequent to the time of the indictment, the court thought it reasonable to allow the defendant an opportunity of answering those affidavits, because it could not be supposed that he would come prepared to answer that which was not contained in the indictment. So, in this case, if, in the course of hearing these affidavits, we should be of opinion that any point is not fully and sufficiently explained *we* \*will give the defendants an opportunity of explaining such part [\*104] of the charge." (Per curiam, in *Rex v. Wilson and Others*, 4 T. R. 487.)

Where a defendant, who has been convicted on an indictment or information, comes up to receive judgment, the prosecutor may read affidavits in aggravation, *though made by some of the witnesses who were examined at the trial*; for *there* the only thing to be inquired into is the fact which constitutes the offence. Matters of extenuation or aggravation are never entered into at that time—neither party can be allowed to do so—but all matters in

aggravation or extenuation of the offence are laid before the court by affidavit when the defendant is called up for judgment. (*Rex v. Sharpness*, 1 T. R. 228.) So, where two defendants were acquitted, and two found guilty, upon an indictment for a conspiracy, upon the latter being brought up for judgment, "Erskine offered the affidavit of Cooper and Leycester, the two acquitted defendants, to be read in favour of the other two. The purport of them was to negative any conspiracy between themselves and the two magistrates, to certify the road to be in repair. And an objection being taken to the reading of their affidavits by the counsel for the prosecution, Erskine observed that it was the first opportunity which offered of tendering their evidence. That if a defendant, against whom there is no evidence be entitled to be acquitted in the first instance, for the purpose of being examined at the trial in favour of the other defendants; by the same rule these persons, who were ultimately acquitted, and had no such opportunity before, are entitled to be heard now." The court directed the affidavits to be read. (*Rex v. Mawbey, Bart., and Others*, 6 T. R. 627.)

When a defendant is brought up for judgment, his acts previous to and at the time of the offence committed, and up to the time of the trial, may be proved by affidavit either in aggravation or mitigation of punishment; for although the conviction proves *the offence itself*, yet the special circumstances connected with such offence do not appear, unless indeed there has [\*105] been a trial, and the judge's \*notes (which are always read in the first instance) contain a full account of all the circumstances, and neither party wishes to add or explain anything. Where a defendant was convicted of a libel, which purported to have been written in consequence of his having seen a statement of facts in different newspapers, an affidavit that he read those statements in such newspapers may be received in mitigation of punishment; but an affidavit that the facts contained in those statements were true is not admissible. (*Rex v. Burdett*, 4 B. & A. 314.)

When a defendant is brought up for judgment, his acts *subsequent to the trial* may be considered either by way of aggravating or mitigating the punishment, even though they be separate and distinct offences, for which he may be afterwards punished. As where the defendant being convicted of a libel, after the trial publishes what he calls an *apology*, but which is in fact more libellous than the publication for which he was tried. But, in such cases, the court will take care not to inflict a greater punishment than the principal charge itself will warrant. (*Rex v. Withers*, 3 T. R. 428.) There Lord Kenyon, C. J., said, "It is well settled that the conduct of the defendant, subsequent to the time when he is found guilty, may be taken into consideration, either by way of aggravating or mitigating the punishment. *In general it is done for his benefit* in order to extenuate the offence; but it is also done, if required, to aggravate; though, in such cases, the court will always take care not to inflict a greater punishment than the principal offence itself will warrant." (3 T. R. 433, S. C.)

The prosecutor himself may, of course, make an affidavit in aggravation. So, the defendant himself may make an affidavit in extenuation. But, generally speaking, mere hearsay evidence is not admissible on either side. Thus, where a defendant is brought up to receive judgment after conviction, an affidavit by the prosecutor in aggravation, stating that a third person, who refused to join in the affidavit, had *informed him* that the defendant, after



the trial, had repeated, in his hearing, the libellous matter for which \*he was indicted, is not admissible; at least, not without swearing [\*106] that such third person was *under the control or influence of the defendant*. (Rex v. Pinkerton, 2 East, 357; and see Rex v. Willett, 6 T. R. 294; Rex v. Younghusband, 4 N. & M. 850; Ex parte Williams, 5 Jurist, 1133.) But where it was satisfactorily proved that the persons, who so informed the deponent of the defendant's subsequent misconduct, were under the influence of the defendant, and had been applied to for their testimony and had refused it; the court permitted affidavits to be read of what such persons had stated, and, at the same time, allowed the defendant and those persons an opportunity of answering that fact. (Rex v. Archer, 2 T. R. 203, note; and see Kel. 55, pl. 5; Rex v. Jolliffe, 4 T. R. 285-6.) It may, however, be doubted whether mere hearsay evidence would, under such circumstances, be now permitted. See the cases above cited, particularly Rex v. Pinkerton, 2 East, 357.)

Where a defendant was convicted upon a criminal information for an assault, and, upon his being brought up for judgment, it appeared on the affidavits that the prosecutor had commenced an action for the same assault, the court refused to pass any sentence whatever upon the conviction, although the prosecutor offered then to discontinue the action. Per Lord Denman, C. J., "It is too late now; it should have been done before. The court cannot pass any sentence for the assault under these circumstances; but as the defendant in addressing the court, has used violent expressions towards the prosecutor, he must give security to keep the peace. That is all that can be ordered." (Rex v. O'Gorman Mahon, 4 Ad. & Ell. 575.)

It frequently happens that the court, instead of passing sentence, recommend the parties to go before the Master of the Crown Office by way of reference: and, if that is acceded to on both sides, a rule is drawn up accordingly. (See the form, Appendix A., No. 51.) Either party wishing to proceed obtains the Master's appointment, and serves a copy thereof on the other side. The affidavits on both sides, \*and briefs, &c., should be left with the Master for his consideration. Should either [\*107] party be desirous of attending by counsel, notice to that effect should be served on the adverse solicitor. The prosecutor's bill of costs should be laid before the Master. The clerks in court, and solicitors on both sides, usually attend the appointment before the Master, and either they or counsel offer observations upon the case as disclosed by the affidavits and evidence. The Master afterwards makes his allocatur upon the rule of reference, and awards such sum as he thinks proper to be paid by the defendant to the prosecutor by way of satisfaction for the injury done, and for his costs. And, if the defendant do not comply therewith, the court will, upon an affidavit of service of the rule and allocatur, and the personal demand of the sum awarded by the prosecutor or his attorney, grant a rule to shew cause why an attachment should not issue for non-payment thereof, (1 Gude, 109;) or why a rule should not be made, ordering the defendant to pay to the prosecutor the sum awarded; upon which rule (when made absolute) execution may issue.

A reference of the above description is frequently of advantage to both parties: to the prosecutor, because he thereby obtains payment of his costs,

and also a reasonable compensation for the injury he has sustained; to the defendant, because he escapes the humiliation of being publicly sentenced in open court, and also imprisonment. But it is, of course, entirely in the discretion of the court to permit such a reference.

The punishment to be awarded in any particular case depends entirely upon the discretion of the court; who takes into full consideration the nature of the offence, and all the circumstances attending it, both of an aggravating and extenuating nature. Sometimes a heavy fine is imposed; sometimes a long imprisonment—frequently both; and the defendant is often required, in addition, to find sureties to keep the peace or to be of good behaviour for a certain period after the term of his imprisonment shall have expired. And [\*108] he is usually directed to be detained \*in custody until the fine be paid, and sureties given in pursuance of the sentence passed upon him.

A rule is drawn up by the clerk of the rules in the Crown Office, according to the sentence of the court. (See the form, Appendix A., No. 52.) And thereupon final judgment is entered on the roll. (See the form, Appendix A., No. 53.) The original rule is forthwith lodged with the Marshal or other officer in whose custody the defendant is. (1 Gude, 108.)

If the court order the defendant to be imprisoned in a distant county gaol, and order him in the first instance into the custody of the Marshal, the sentence may be carried into effect at the expense of either the prosecutor or the defendant, or by the Marshal conveying him to the gaol; but, as it is attended with considerable expense to the parties, it is not compulsory upon either. (Rex v. Cholesey, Cowp. 726.) It has frequently happened that the defendant has remained the whole term of his imprisonment in the custody of the Marshal; but, upon ex officio prosecutions, the defendant is always taken to the gaol or prison ordered by the court, at the expense of the Crown. (1 Gude, 109.)

The defendant must either suffer the full imprisonment and pay the penalty, &c., or obtain the Queen's pardon. A remission of part of the sentence may sometimes be obtained upon petition "To the Queen's most excellent Majesty;" which is lodged at the office of the secretary of state for the home department. But of course such petition must be founded upon special grounds, and the statements therein be duly verified. If the defendant does not receive a remission or pardon, and he remains in custody till the expiration of his sentence, and has to find security for his good behaviour, the names and addition of the bail proposed should be left with the solicitor for the prosecutor for his approval a reasonable time before the term of imprisonment expires, to enable the necessary inquiries to be made as to their responsibility; otherwise the defendant may be detained beyond that period. If the bail be approved, the attorney for the prosecutor may signify [\*109] the same \*accordingly, and subscribe his name thereto as solicitor for the prosecutor; but if the parties are hostile, and the solicitor will not give such approval, then a formal notice must be given, and an affidavit of the service thereof made and produced before the judge or magistrate at the time of taking the recognizance. Upon such approval or notice being given, the clerk in court for the defendant will prepare the recognizance (Form, Appendix A., No. 54) and attend, if required, before the judge; or,

if the defendant is in custody, then before any magistrate who can attend at the prison to take such recognizance.

If the court on passing sentence, ordered the defendant to pay a fine, the prosecutor is entitled, under the writ of privy seal, to a third part thereof, (1 Chit. Crim. L. 871;) and where the fine is paid to the Master of the Crown Office, the prosecutor's clerk in court enters the prosecutor's bill of costs upon a roll, and the Master certifies that the prosecutor has been put to such an expense in the prosecution; and, upon the production of this roll to two of the judges of the court, they sign a fiat for the allowance of the third part of the fine, and the Master of the Crown Office pays the money to the prosecutor accordingly; and, if that sum is not sufficient to reimburse the prosecutor his expenses, the Lords of the Treasury may, upon petition stating the circumstances, order him to be allowed the residue, or a part of such fine sufficient for that purpose, particularly if it is a prosecution concerning the public. (1 Gude, 110.)

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\*BOOK II.

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QUO WARRANTO INFORMATIONS.

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CHAPTER I.

OF THE ORIGIN AND NATURE OF QUO WARRANTO INFORMATIONS: AND  
HEREIN OF THE ANCIENT WRIT OF QUO WARRANTO.

THE obsolete writ of quo warranto, whence the information of the present day derives its origin, was in the nature of a writ of right for the King against persons who usurped any office, franchise, liberty, or privilege belonging to the Crown, to inquire by what authority (quo warranto) they claimed to exercise such office, &c., in order to have the right determined. (2 Selwyn's N. P. 1163, 9th ed.)

In 3 Blac. Com. c. 17, sec. 5, it is said, "A writ of quo warranto is in the nature of a writ of right for the King against him who claims or usurps any office, franchise, or liberty, to inquire by what authority he supports his claim, in order to determine the right. (Finch, L. 322; 2 Inst. 282.) It lies also in case of non-user, or long neglect of a franchise, or mis-user, or abuse of it; being a writ commanding the defendant to show by what warrant he exercises such a franchise, having never had any grant of it, or having forfeited it by neglect or abuse. This was originally returnable before the King's justices at Westminster, (Old. Nat. Brev. fol. 107, ed. 1534;) but afterwards only before the justices in eyre by virtue of the statutes of quo warranto, 6 Edw. 1, c. 1, and 18 Edw. 1, st. 2, \*(2 Inst. 498; [\*111] Rast. Entr. 540;) but since those justices have given place to the King's temporary commissioners of assize, the judges on the several circuits,

this branch of the statutes hath lost its effect, (2 Inst. 498;) and writs of quo warranto (if brought at all) must now be prosecuted and determined before the King's justices at Westminster. And, in case of judgment for the defendant, he shall have an allowance of his franchise; but, in case of judgment for the King, for that the party is entitled to no such franchise, or hath disused or abused it, the franchise is either seized into the King's hands, to be granted out again to whomsoever he shall please; or, if it be not such a franchise as may subsist in the hands of the Crown, there is merely judgment of *ouster*, to turn out the party who usurped it." (Cro. Jac. 259; 1 Show. 280.)

In Comyn's Digest, tit. Quo Warranto, (A.) it is said, "A quo warranto lies for all franchises; as, for waifs, estrays, &c., Co. Ent. 528. 541. 544: goods and chattels of felons, deodands, &c., Co. Ent. 528. 549: fines, amerciaments, issues, &c., Co. Ent. 551 b, 561 a: a park, warren, &c., Co. Ent. 561: so, for wreck of the sea, &c., 2 Rol. 205, l. 35: or for taking lastage or ballastage of ships, 1 Sid. 86: so it lies for franchises which cannot be seized in the King's hands, for the party may be ousted of them; as, for a court baron, Quo W. 14; Treby's Argument, per 3 J., 2 dub.; 2 Cro. 259; Yel. 190: a court leet or borough court, Co. Ent. 527 b, 544: a fair, market, toll, &c., Co. Ent. 527 b, 544. 561 a: so, it lies for claiming to be a corporation, Co. Ent. 527 b: to choose bailiffs or other officers, Co. Ent. 527 b, 537 b: coroner, constable, clerk of a market, justice, &c., Co. Ent. 528 a, 537 b, 551 b: so it lies upon a claim of exemptions; as, to be exempt from the government of the mayor, justices, &c., Co. Ent. 528 a: so, a quo warranto lies against him who abuses his franchise or liberties, 2 Inst. 496: so, it lies upon a claim of the correction of others, as to have the assize of bread and bear, weights or [\*112] measures, Co. Ent. 528 a: to have a prison, power of \*arresting, &c., Co. Ent. 528 a: punishment of forestallers or other offenders, Co. Ent. 528 a: pillory, tumbrell, &c., Co. Ent. 551 b." "So against him who exercises a power unlawfully; as if a mayor, &c., admits to freedom persons who have no right, for there is no other remedy." (Comyn's Digest, tit. Quo Warranto, (C.) citing 1 Salk. 374.)

"The judgment on a writ of quo warranto (being in the nature of a writ of right) is final and conclusive, even against the Crown, (1 Sid. 86; 2 Show. 47; 12 Mod. 225,) which, together with the length of its process, probably occasioned that disuse into which it is now fallen, and introduced a more modern method of prosecution by *information* filed in the Court of King's Bench, by the attorney-general, in the nature of a writ of quo warranto; wherein the process is speedier, and the judgment, if against the Crown, not quite so decisive. This is properly a criminal method of prosecution, as well to punish the usurper by a fine for the usurpation of the franchise, as to oust him or seize it for the crown: but hath long been applied to the mere purposes of trying the civil right, seizing the franchise, or ousting the wrongful possessor; the fine being nominal only." (3 Blac. Com. c. 17, sec. 5.)

"During the violent proceedings that took place in the latter end of the reign of King Charles the Second, it was, among other things, thought expedient to new model most of the corporation towns in the kingdom; for which purpose many of those bodies were persuaded to surrender their

charters ; and informations in the nature of quo warranto, were brought against others upon a supposed or frequently a real forfeiture of their franchises by neglect or abuse of them ; and the consequence was, that the liberties of most of them were seized into the hands of the King, who granted them fresh charters, with such alterations as were thought expedient ; and during their state of anarchy, the Crown named all their magistrates. This exertion of power, though perhaps in summo jure, it was for the most part strictly legal, gave a great and just alarm ; the new \*modelling of all corporations being a very large stride towards [113] establishing arbitrary power ; and, therefore, it was thought necessary, at the Revolution, to bridle this branch of the prerogative, at least so far as regarded the Metropolis, by statute 2 W. & M. c. 8, which enacts, that the franchises of the city of London shall never be forfeited again for any cause whatsoever." (3 Blac. Com. c. 17, sec. 5.)

Of late years quo warranto informations, at the instance of private relators, have been considered merely in the nature of civil proceedings. (4 Blac. Com. 308 ; Rex v. Francis, 2 T. R. 484.) But the practice relating to them is nearly in every respect similar to that upon criminal informations, except so far as the same has been altered by various acts of Parliament.

Informations, in the nature of quo warranto, may be divided into two classes : viz. 1st. Informations exhibited by and in the name of the attorney-general ex officio, without any relator, and which are filed without leave of the court, or any recognizance being entered into. 2nd. Informations exhibited to and in the name of the Queen's coroner and attorney (commonly called the Master of the Crown Office) at the instance of a relator or relators, which cannot in any case, be filed without previous leave of the court, nor without a recognizance entered into pursuant to the stat. 4 & 5 W. & M. c. 18. The latter class of informations may be subdivided into—1st. Those relating to corporate offices or franchises of a corporate nature in corporate places ; 2nd. All other informations in the nature of quo warranto, filed at the instance of a relator or relators. It should be observed, that the practice relating to informations concerning corporate offices and franchises materially differs in many important respects from the practice relating to other quo warranto informations.

The usurpation of offices and franchises in corporations constitutes the principal ground for applications to the \*court for this kind of information ; indeed, applications for quo warranto informations, in [\*114] other cases, are of comparatively rare occurrence. We shall presently consider fully in what cases informations, in the nature of quo warranto, will or will not be granted ; but in the meantime, it may be stated as a general rule, that the court will not extend this remedy beyond the limits prescribed by the old writ ; and as that could only be prosecuted for an usurpation on the rights or prerogatives of the Crown, so an information in the nature of a quo warranto, can only be granted in such cases. (Rex v. Shepherd, 4 T. R. 381.)

[\*115]

## \*CHAPTER II.

OF THE STATUTES RELATING TO INFORMATIONS IN THE NATURE OF QUO WARRANTO: VIZ. 4 & 5 WILL. & M. C. 18; 9 ANN. C. 20; 32 GEO. 3, c. 58; 5 & 6 WILL. 4, c. 76; 6 & 7 WILL. 4, c. 104; 7 WILL. 4 & 1 VICT. c. 78; 5 & 6 VICT. C. 104; 5 & 6 VICT. C. 111, AND THE DECISIONS THEREON.

By 4 & 5 Will. & M. c. 18, intituled "An Act to prevent malicious Informations in the Court of King's Bench, and for the more easy reversal of Outlawries in the same Court," after reciting that "Whereas divers malicious and contentious persons have more of late than in times past procured to be exhibited and prosecuted informations in their Majesties' Court of King's Bench at Westminster, against persons in all the counties of England, for *trespasses, batteries, and other misdemeanors*; and, after the parties so informed against have appeared to such informations, and pleaded to issue, the informers do very seldom proceed any further, whereby the persons so informed against are put to great charges in their defence; and, although at the trials of such informations, verdicts are given for them, or a nolle prosequi be entered against them, they have no remedy for obtaining costs against such informers," it is enacted (sect. 2.) "That from and after the first day of Easter-term, in the year 1698, the clerk of the Crown, in the said Court of King's Bench, for the time being, shall not, without express order to be given by the said court in open court, exhibit, receive, or file *any information for any of the causes aforesaid*, or issue out any process thereupon, before he shall have taken, or shall have delivered to him a recognizance from the person or persons procuring such information to be exhibited, with the place of his, her, or their abode, title, or profession to be entered, to the person or persons against whom such information or informations is or are to be exhibited, in the penalty of twenty pounds, that he, she, or they will effectually prosecute such informations or information, and abide by and observe such orders as the said court shall direct; which recognizance the said clerk of the Crown, and also every justice of the peace of any county, city, franchise, or town corporate (where the cause of any such information shall arise) are hereby empowered to take; after the taking whereof by the said clerk of the Crown, or the receipt thereof from any justice of the peace, the said clerk of the Crown shall make an entry thereof upon record, and shall file a memorandum thereof in some public place in his Office, that all persons may resort thereunto without fee; and in case any person or persons, against whom any information or informations for the causes aforesaid, or any of them, shall be exhibited, shall appear thereunto and plead to issue; and that the prosecutor or prosecutors of such information or informations shall not, at his and their own proper costs and charges, within one whole year next after issue joined therein procure the same to be tried; or, if upon such trial, a verdict pass for the defendant or defendants, or in case the said informer or informers procure a nolle prosequi to be entered, then

and in any of the said cases the said Court of King's Bench is hereby authorized to award to the said defendant and defendants his, her, or their costs, unless the judge, before whom such information shall be tried, shall, at the trial of such information, in open court certify upon record, that there was a reasonable cause for exhibiting such information; and, in case the said informer or informers shall not, within three months next after the said costs taxed and demand made thereof, pay to the said defendant or defendants the said costs, then the said defendant and defendants shall have the benefit of the said recognizance to compel them thereunto." Sect. 6 provides, "That nothing in this act, relating to informations, shall extend, or be construed to extend, \*to any other informations than such as are or shall be exhibited in the name of their Majesties' coroner or [\*117] attorney in the Court of King's Bench for the time being, (commonly called the Master of the Crown Office,) any thing in the said act contained to the contrary notwithstanding." Sect. 7 enacts, "That upon the demise of any King or Queen of this realm, all pleas to informations in the said court shall stand and be good in law, without calling defendants to plead again to the same, unless the defendants desire so to do, and make request to the said court for that purpose, within five months next after such demise, any law or usage to the contrary notwithstanding."

The above act is confined to informations exhibited in the Court of Queen's Bench by the Master of the Crown Office, and the recognizances are to be entered into before the information is filed; (*Rex v. Roberts*, 2 B. & Adol. 63.) Or, at all events, before process thereon issues. Soon after the act passed an information, in the nature of a quo warranto was filed without a recognizance, and process issued thereon. Upon motion to set aside such process, it was insisted that informations in the nature of a quo warranto, were not within the statute, for that extended only to informations for trespasses, batteries, and other misdemeanors. But the court said, "That this usurpation here pretended was a misdemeanor, and the information might be as vexatious in this case as in trespass or battery: that this last is a remedial law to prevent vexation, and must be construed accordingly: therefore, the process was ordered to be set aside; but the information stood." (*Rex v. The Mayor and Aldermen of Hertford*, 1 Salk. 376; *Carthew*, 503, S. C.) On an information in the nature of a quo warranto, for the office of burgess of Cardiff, a recognizance was taken as upon the stat. 4 & 5 Will. & M. c. 18, and not being tried within the year, the court was moved for costs against the prosecutor, which was opposed on pretence that these informations were not within the act, which speaks only of trespasses, batteries, and other misdemeanors. Sed per Curiam, "An usurpation is a \*misdemeanor, and the practice of taking recognizances is the best expositor: besides, this has been determined in Salk. 376. [\*118] But as there has been no verdict or judgment, it must not be costs generally, as on 9 Ann. c. 20, but restrained to £20, as on the 4th & 5th Will. & M." (*Rex v. Morgan*, 2 Stra. 1042.) The same point was decided in *Rex v. Howell*, Cases temp. Hardwicke, 247, viz., that in a quo warranto information the prosecutor is upon stat. 4 & 5 Will. & M. c. 18, liable to costs to the extent of his recognizance, but no further, if he do not proceed to trial within a year after issue joined. And, in giving judgment, Lord Hardwicke, C. J., said, "Now no information at all can be filed by the clerk of

the Crown, without leave of the court; but the true meaning of the act, and warranted by practice, is, that he should file no information without leave, nor issue process thereon without recognizance. As to these informations not being for misdemeanors, it is now too late to make that objection, since the practice has been always otherwise. The court, indeed, have themselves made this distinction,—to grant informations for public usurpations; but, if it is only of a private franchise not concerning public government, as a fair, &c., the court has sometimes refused them, and directed an application to the attorney-general. You cannot, in this case, have a rule for what costs shall be taxed in general; for you can have no more than the penalty the recognizance extends to. But, if the case had gone to trial, you might have had your whole costs; because, upon the stat. 9 Ann., judgment would be given for costs." If the quo warranto information does not relate to any corporate office or franchise of a corporate nature in a corporate place, neither the prosecutor nor the defendant can become entitled to costs under the stat. of 9 Ann. c. 20. (See post, 122.) And therefore, in such cases, if the defendant be *acquitted*, he is only entitled to costs to the extent of the recognizance entered into by the prosecutor, pursuant to the stat. 4 & 5 Will. & M. c. 18, s. 2, viz., £20. (Rex v. Filewood, 2 T. R. 145.) And the court, on granting an information, will not [\*119] \*require the prosecutor to give security for the costs, in case the defendant should be acquitted, beyond the extent of the recognizance required by the act. (Rex v. Brooke and Others, 2 T. R. 190.) But it is otherwise, where the information relates to a corporate office, and the persons making the application are not *bonâ fide* relators. (Rex v. Wakelin, 1 B. & Adol. 50; Reg. v. Dudley, 7 Dowl. 700.)

In Rex v. Marsden, (3 Burr. 1817,) Wilmot, J., speaking of the 4 & 5 Will. & M. c. 18, said, "That act was made to prevent the Master of the Crown Office from vexing and oppressing the subject; and intrusted this court with the power of inspecting the filing of information and seeing that he did not exercise his power to the oppression of the subject, or without sufficient ground and foundation. So that that act was made to check and control the power of the Master of the Crown Office, not to give him a right to exercise a power which he never exercised before. Quite the contrary. It is contrary to all principles to suppose that he should have such a power. Even this court can have no authority but by common law, or prescription, or by act of parliament." In that case, the court doubted whether an information, in the nature of a quo warranto, would lie in the name of the Master of the Crown Office, at the instance of a private relator, for holding a public fair or market, but they held that such an information would not lie for *encouraging and promoting* the holding of one.

By 9 Ann. c. 20, intituled "An Act for rendering the Proceedings upon Writs of Mandamus and Informations, in the nature of a Quo Warranto, more speedy and effectual; and for the more easy trying and determining the Rights of Offices and Franchises in Corporations and Boroughs;" reciting that, "Whereas divers persons have of late illegally intruded themselves into, and have taken upon themselves to execute the offices of mayors, bailiffs, portreeves, and other offices, within cities, towns corporate, boroughs, and places, within that part of Great Britain called England and Wales,



and where such offices were annual offices it hath been found \*very difficult, if not impracticable by the laws now in being, to bring to [\*120] a trial and determination the right of such persons to the said offices, within the compass of the year, and where such offices were not annual offices it hath been found difficult to try and determine the right of such persons to such offices before they have done divers acts in their said offices prejudicial to the peace, order, and good government within such cities, towns corporate, boroughs, and places, wherein they have respectively acted," it is enacted (Sect. 4.) "That, from and after the said first day of Trinity term, (in the year 1711,) in case any person or persons shall usurp, intrude into, or unlawfully hold, and execute any of the said offices or franchises, it shall and may be lawful to and for the proper officer in each of the said respective courts [the court of Queen's Bench, the courts of sessions of counties palatine, and the courts of grand sessions in Wales, sect. 1,] with the leave of the said courts, respectively, to exhibit one or more information or informations, in the nature of a quo warranto, at the relation of any person or persons desiring to sue or prosecute the same, and who shall be mentioned in such information or informations to be the relator or relators against such person or persons so usurping, intruding into, or unlawfully holding and executing any of the said offices or franchises, and to proceed therein in such manner as is usual in cases of information in the nature of a quo warranto; and, if it shall appear to the said respective courts, that the several rights of divers persons to the said offices or franchises may properly be determined on one information, it shall and may be lawful for the said respective courts to give leave to exhibit one such information against several persons, in order to try their respective rights to such offices or franchises; and such person or persons, against whom such information or informations, in the nature of a quo warranto, shall be sued or prosecuted, shall appear and plead, as of the same term or sessions in which the said information or informations shall be filed, unless the court, where such information shall be filed, shall give further \*time to such person or persons, against whom such information shall be exhibited, to plead; and such person [\*121] or persons who shall sue or prosecute such information or informations, in the nature of a quo warranto, shall proceed thereupon with the most convenient speed that may be, any law or usage to the contrary thereof in any wise notwithstanding." Sect. 5 enacts and declares, "that from and after the said first day of Trinity term, in case any person or persons, against whom any information or informations in the nature of a quo warranto shall in any of the said cases be exhibited in any of the said courts, shall be found or adjudged guilty of an usurpation, or intrusion into, or unlawfully holding and executing any of the said offices or franchises, it shall and may be lawful to and for the said courts respectively, as well to give judgment of *ouster* against such person or persons of and from any of the said offices or franchises, as to *fine* such person or persons respectively, for his or their usurping, intruding into, or unlawfully holding and executing any of the said offices or franchises; and also it shall and may be lawful to and for the said courts respectively, to give judgment that the relator or relators, in such information named, shall recover his or their costs of such prosecution; and if judgment shall be given for the defendant or defendants in such information, he or they for whom such judgment shall be given shall recover his or

their costs therein expended against such relator or relators, such costs to be levied in manner aforesaid (i. e. by *capias ad satisfaciendum*, *fieri facias*, or *elegit*.)" Sect. 6 enacts, "that it shall and may be lawful to and for the said courts respectively, to allow to such person or persons respectively to whom any writ of *mandamus* shall be directed, or against whom any information in the nature of a *quo warranto* in any of the cases aforesaid shall be sued or prosecuted, or to the person or persons who shall sue or prosecute the same, such convenient time respectively to make a return, plead, reply, rejoin, or demur, as to the said courts respectively shall seem just and [\*122] reasonable, any thing herein contained to the contrary thereof in any wise notwithstanding." Sect. 7 extends the stat. of 4 & 5 Ann. c. 16, and all the other statutes of *jeofails*, to all informations in the nature of a *quo warranto*, and proceedings thereon, "for any the matters in this act mentioned."

It is extremely important to bear in mind, that this statute applies only to *corporate offices, and franchises of a corporate nature, in corporate places*. "The act is meant to extend to all officers of corporations as such; and as far as relates to all the corporate rights of the burgesses and freemen, it is very legally, clearly, and correctly drawn. But it is not within the reason or meaning of the act, that it should extend generally to all offices or franchises exercised without authority from the Crown within a corporation. It was meant to be confined to such franchises as were claimed in instances affecting those rights between party and party." (Per Lord Mansfield, C. J., in *Rex v. Williams*, 1 Burr. 407.) In the same case, p. 408, Denison, J., says, "There are numbers of offices which a man may usurp and be liable to an information for usurping, which are not franchises in corporations; but these franchises, mentioned in the act, mean corporation rights, or rights to freedom in corporations." And, upon that ground, the court reversed the judgment upon an information in the nature of *quo warranto* for holding a court of record within the borough of Denby, so far as such judgment gave the relator his costs, Denison, J., saying, "The words of the act are plain, that this is not a case upon which the informer can recover costs. The proceedings, indeed, may be at common law for punishment, therefore this latter part, [viz. the judgment of ouster, and that the defendant be taken, &c.] is right; but the judgment as to costs ought to be reversed, and the mention of a relator is no more than surplusage and may be rejected, and, therefore, will not hurt the common-law judgment." (*Rex v. Williams*, 1 Burr. 408.) So, upon an information, in the nature of a *quo warranto*, against the defendants, for usurping the office of constables of Birmingham, which \*was not then a corporation or borough, the [\*123] court held that the relator was not entitled to costs under the stat. 9 Ann. c. 20, for that the word "places" in the act only extends to offices in *places of the same kind with those before enumerated*, viz. cities, towns corporate, and boroughs; otherwise the legislature would have used only one compendious word, which would have included places of every denomination. (*Rex v. Wallis*, 5 T. R. 375; *Id.* 379.) The same point was decided upon a review of all the authorities in *Rex v. McKay*, 5 B. & C. 640; 8 D. & Ry. 393, S. C. And not only must the place in which the office or franchise is exercised be a corporate place, *but the office or franchise itself must be of a corporate nature*. Therefore, a *quo warranto* informa-

tion for usurping the office of register and clerk of the Court of Requests, in the city of Bristol, is not within the statute 9 Ann. c. 20; nor is the defendant in such a case, if successful, entitled to full costs under that act, for the office is not a corporate one, although in a corporate place. (Rex v. Hall, 1 B. & C. 237.) In that case, Abbott, C. J., after citing the statute, says, "Now, it has been held, in *The King v. Wallis*, that the word *places* in this act must mean places ejusdem generis with those before mentioned; and, therefore, that Birmingham not being [then] either a city or town corporate, was not a place within the act; and I am of opinion that the terms 'other offices,' must mean offices ejusdem generis with those before mentioned, *which are all corporate offices*. Here the office of a commissioner of a court of request is not a corporate office, and that being so, the defendant is not entitled to costs under 9 Ann. c. 20."

It has been decided that the 9 Ann. c. 20, only regulates the proceedings on informations against *individuals* usurping corporate offices, or franchises in corporate places. It does not extend to a private company. (Horn v. the Cutlers' Company, Selwyn's N. P. 1167, 9th ed.) And the court have refused an information in the nature of a quo warranto against a *corporation as a body*, to shew by what authority they claim to act as a corporation; but they \*granted informations against the several individual members, to show by what authority they respectively claimed to exercise [\*124] their particular franchises. (Rex v. The Corporation of Carmarthen, 2 Burr. 869; 1 W. Blac. 187.) In that case, Lord Mansfield, C. J., and Denison, J., were of opinion that the stat. 9 Ann. c. 20, was calculated only against individuals usurping offices or franchises in corporations, and not against any corporation itself as a body, and that the words of the act manifestly carry this meaning; and it was observed by them, and acknowledged by the counsel making the application, "that there was no instance of any information, in the nature of a quo warranto, being brought against any corporation, as a corporation, for an usurpation upon the Crown, but by and in the name of the attorney-general, on behalf of the Crown." So, in Rex v. Ogden and Others, 10 B. & C. 230, it was held that an information in the nature of quo warranto against *certain individuals for claiming to act as a corporation*, must be filed by and in the name of the attorney-general, and not by the Master of the Crown Office at the instance of a relator: and it has very recently been decided that the charter of a corporation cannot be attacked through the medium of a quo warranto information against an officer of the corporation (the coroner of a borough,) at the instance of a private relator. (Regina v. Taylor, 11 Ad. & Ell. 949; 3 Per. & D. 652, S. C.) But the court will grant a quo warranto information at the instance of a relator, against a member of a corporation, *on grounds affecting his individual title*, although it be suggested that the same objections apply to the title of every member, and therefore that the application is in effect against the whole corporate body. (Rex v. White, 5 Ad. & Ell. 613; 1 Nev. & P. 84, S. C.) And leave to file a quo warranto information against an individual corporator, at the instance of a private person, will not be refused merely because the proceeding may, or will have, the effect of dissolving the corporation. (Rex v. Parry, 6 Ad. & Ell. 810; 2 Nev. & P. 414, S. C.) In that case, Lord Denman, C. J., said, "It cannot be stated as a

[\*125] \*proposition of law, or as a settled point of practice in this court, that leave to file an information will not be granted *merely* because the effect may, or even will be, to dissolve the corporation. That objection was recently made in the case of *Rex v. White*, and under the circumstances properly overruled. The facts of that case, indeed, hardly substantiated the objection; but our Brother Patteson there stated, that where the objection is in itself *an individual objection*, the circumstance of every member of the corporation being in a similar predicament to the person against whom the motion is made, is not a sufficient ground to refuse a *quo warranto*; and we all agree that *in itself, and standing alone* it is not." (6 Ad. & Ell. 820, S. C.) But such a circumstance will influence the court in the exercise of its discretion, and, coupled with other facts, may induce them to refuse the application. (S. C., and see *Rex v. Bond*, 2 T. R. 767: *Rex v. Trevenner*, 2 B. & A. 339: *Rex v. Wakelin*, 1 B. & Adol. 50.)

It was observed by Wilmot, J., in *Rex v. Trelawney*, (3 Burr. 1616,) "that the two acts of parliament, 4 & 5 Will. & M. c. 18, and 9 Ann. c. 20, relate to quite different objects, and are the reverse of each other. . The former *restrains* the Clerk of the Crown in the Court of King's Bench from exhibiting or filing informations *without leave* of the court, in cases where all the king's subjects might, before the making of that act, have made use of the king's name *without such leave*. The latter *lets in every person*, who desires it, to make use of his name in prosecuting usurpers of franchises, whereas before *no subject* could have done so; but it provides that these informations, as well as those for misdemeanors, must be under the leave and discretion of the court; and the court ought not to give such leave without sufficient reason." It is said in Selwyn's N. P., 1166, 9th ed., that before the statute of Queen Anne, a private person could not interpose in *quo warranto*; the Crown by the attorney-general could file such informations; and that, by the common law, usurpations of offices and franchises could be punished only by a prosecution at the king's suit,

though \*the disputes were really between party and party. (Id. p. [\*126] 1165.) It seems, however, to be clear, that before this statute, the Master of the Crown office was in the habit of filing *quo warranto* informations at the instance of private relators, and there are various instances to be found in the Crown Office. (See Tancred on *Quo Warranto*, p. 15.) In *Rex v. Highmore*, (5 B. & A. 771,) a rule nisi was obtained to quash an information in the nature of a *quo warranto* against a bailiff or sub-bailiff of a borough, on the ground that it did not fall within the 9 Ann. c. 20. Counsel, on shewing cause, contended that this was a proceeding at common law, and not founded on 9 Ann. c. 20, and they *cited numerous instances of such informations granted at common law, previously to the passing of that act*. And, per Abbott, C. J., "It is too much to ask of the court to quash an information founded, like the present, on numerous precedents previous to the passing of the stat. 9 Ann. c. 20, and that too in a case in which it is open to the defendant by writ of error to raise the point. The rule must therefore be discharged." The very circumstance of informations in the nature of *quo warranto* being constantly granted at the instance of relators, since the stat. 9 Ann. c. 20, in cases not relating to any corporate office, or franchise of a corporate nature in a corporate place, shews

that such a proceeding was warranted by the common law, if not by the stat. 4 & 4 Will. & M. c. 18. Before the last-mentioned statute, no quo warranto information can be found in which a relator is named, but several such occur between the passing of that act, and the 9 Ann. c. 20. (See Tancred's Quo Warranto, p. 15; Anon., 12 Mod. 225; 10 Will. 3.) By the common law, no relator need be named in the information. (2 Selwyn's N. P. 1165, 9th ed.; Bull. N. P. 207.) But the mention of a relator when unnecessary is no more than surplusage and may be rejected, and therefore will not hurt the common-law judgment. (Per Denison, J., in *Rex v. Williams*, 1 Burr. 408; ante, 122.) Upon the whole it would seem that before the stat. 4 & 5 Will. & M. c. 18, the Master of the Crown office used \*to file informations in the nature of quo warranto, on his own discretion, at the instance of private persons, who, however, were not [\*127] named as relators in the informations. After that statute persons desirous of causing such informations to be filed, were obliged to apply to the court for leave, and also to enter into a recognizance in 20*l.*, but it was not necessary to name them as relators in the informations. The statute 9 Ann. c. 20, required the relators' names to be mentioned in quo warranto informations relating to corporate offices or franchises; since which it has been the practice to insert the relators' names in quo warranto informations exhibited by the Master of the Crown Office, whether relating to any corporate office or not.

By 32 Geo. 3, c. 58, intituled "An act for the amendment of the Law in Proceedings upon Information in nature of Quo Warranto," after reciting that it would greatly tend to secure the freedom of election, and the quiet, tranquillity, and good order of cities, boroughs, and towns corporate, if a certain reasonable limitation of time should be by law established, beyond which no member or officer of any city, borough, or town corporate, should be disturbed in the enjoyment or exercise of his office or franchise which he should have held or enjoyed for such time; it was enacted, (sect. 1,) "That from and after the first day of Trinity term, in the year 1793, it shall and may be lawful for the defendant or defendants to any information in the nature of a quo warranto for the exercise of any office or franchise in any city, borough, or town corporate, whether exhibited with leave of the court or by his Majesty's attorney general, or other officer of the Crown, on behalf of his majesty, by virtue of any royal prerogative or otherwise, and each and every of them severally and respectively, to plead that he or they had first actually taken upon themselves or held and executed the office or franchise, which is the subject of such information, *six years or more* (a) before \*the exhibiting of such information, such six years to be [\*128] reckoned and computed from the day on which such defendant so pleading was actually admitted and sworn into such office or franchise, which plea shall or may be pleaded either singly, or together with and besides such plea as he or they might have lawfully pleaded before the passing of this act, or *such several pleas as the court on motion shall allow*; and if upon the trial of such information the issue joined upon the plea aforesaid shall be found for the defendant or defendants, or any of them, he or they shall be entitled to judgment, and to such and like costs as he or they would by law have been intitled to, if a verdict and judgment had

(a) Now see 7 Will. 4 & 1 Vict. c. 78, s. 23, post, 135, 136.

been given for him or them upon the merits of his or their title." Sect. 2 provides, that, in every such case, the prosecutor of such information may reply to such plea any forfeiture, surrender or avoidance by the defendant of such office or franchise happening within six years before the exhibition of such information, whereon the defendant may take issue, and shall be entitled to costs in manner aforesaid. Sect. 3 enacts, "That if any person or persons against whom any such information as aforesaid shall be exhibited shall derive title under an election, nomination, swearing into office or admission by any person or persons, the title of such person or persons, against whom such informations shall be exhibited, shall not be defeated or affected by reason or on account of any defect in the title of such person or persons so electing, nominating, swearing into office, or admitting, in case such person or persons under whom title shall be derived as aforesaid was or were in exercise *de facto* of the franchise or office in virtue of which he or they so elected, nominated, sworn in, or admitted, at a period *six years at least*(a) previous to the time of filing such information, and his or their title shall not have been questioned by any legal proceeding carried on with effect." Sect. 4 enacts, "That the mayor, bailiff, sheriff, town clerk, or other officer of any corporation, having the custody of or power over the [\*129] \*records of the same, shall upon the demand of any person, being an officer or member of such corporation, on the payment of one shilling, permit such person, on any day or days, except Christmas-day, Good Friday, and Sunday, between the hours of nine in the morning and three in the afternoon, to inspect the books and papers wherein the admission or swearing in of the freemen, burgesses, or other members or officers of such corporation shall be entered, and to have copies or minutes of the admission, or the entry of swearing in, of any one or more of such freemen, burgesses, or other members or officers upon paying sixpence for for every one hundred words for writing the same: and if such mayor, bailiff, sheriff, town clerk, or other officer shall refuse or deny to any person hereby entitled to demand it, the inspection of such books or papers, or to have copies or minutes thereof as aforesaid, such mayor, bailiff, sheriff, town clerk, or other officer, shall for every such offence forfeit and pay the sum of £100, together with full costs of suit, to him, her, or them who shall inform and sue for the same, within one year after such offence committed, by action of debt, bill, plaint or information, in any of His Majesty's Courts of Record at Westminster, wherein no essoin, protection, wager of law, nor more than one imparlance, shall be allowed."

Before the passing of this act, a defendant could not plead double to an information in the nature of a quo warranto. (*Rex v. Newland, Sayer's R. 96; Rex v. The Archbishop of York, Willes, 533.*) And it has since been decided, that the act, being in *pari materiâ* with the 9 Ann. c. 20, applies only to corporate offices and franchises of a corporate nature in corporate places; consequently a defendant cannot be permitted to plead double to an information in the nature of a quo warranto for exercising any office or franchise not of a corporate nature, as bailiff of a borough appointed at a court leet. (*Rex v. Richardson, 9 East, 469.*) In *Rex v. Highmore, (5 B. & A. 771)*, the defendant in a similar case, was permitted to plead [\*130] double, in order \*that the opinion of a court of error might be taken upon the point, which could not be obtained if the rule was refused.

(a) Now see stat. 7 Will. 4 & 1 Vict. c. 78, s. 1, post, 134.

But see this case explained by Bayley, J., in *Rex v. McKay* (5 B. & C. 645); *Rex v. Attwood* (4 B. & Adol. 481; Id. 494.)

Where a defendant is entitled to plead double, under the stat. 32 Geo. 3, c. 58, he may obtain leave of the court to plead several pleas, although he do not plead (inter alia) that he had holden the office or franchise in question for six years or more, before the exhibiting of the information. (*Rex v. Autridge*, 8 T. R. 467.) In that case Lord Kenyon, C. J. said, "that the legislature intended to give a defendant in such a proceeding the liberty of pleading several pleas, whether with or without a plea of the statute of Limitations, the concluding words in the act being, "or such several pleas as the court, on motion, shall allow." A plea of the above Statute of Limitations can now be very seldom (if ever) necessary, except where the information is filed by the attorney-general ex officio. For in the first place the court will not make absolute a rule for an information in the nature of quo warranto, unless such information can be actually exhibited and filed within six years limited by the statute. (*Reg. v. Harris*, 11 Ad. & Ell. 518; 3 Per. & D. 266; 8 Dowl. 499, S. C.; *Rex v. Stokes*, 2 M. & S. 71.) Secondly, by stat. 7 Will. 4 & 1 Vict. c. 78, s. 23, applications for leave to file quo warranto informations relating to the office of mayor, alderman, councillor, or burgess of any borough, must be made within twelve calendar months after the election or disqualification.

By 5 & 6 Will. 4, c. 76, intituled "An Act to provide for the regulation of Municipal Corporations in England and Wales," the constitution of all the municipal corporations in the kingdom is materially changed, and placed upon a new footing. Sect. 1 enacts, "That so much of all laws, statutes, and usages, and so much of all royal and other charters, grants, and letters patent now in force relating to the several boroughs named in schedules (A.) and (B.) \*to this act annexed, or to the inhabitants thereof, or to the several bodies or reputed bodies corporate named in the said [\*131] schedules, or any of them, as are inconsistent with or contrary to the provisions of this act, shall be and the same are hereby repealed and annulled." Sect. 6 enacts, "That after the first election of councillors under this act, in any borough, the body or reputed body corporate named in the said schedules, in connexion with such borough, shall take and bear the name of *The mayor, aldermen, and burgesses* of such borough, and by that name shall have perpetual succession, and shall be capable in law, by the council hereinafter mentioned of such borough, to do and suffer all acts which now lawfully they and their successors respectively may do and suffer by any name or title of incorporation; and the mayor of each of the said boroughs shall be capable in law to do and suffer all acts which the chief officer of such borough may now lawfully do and suffer, so far as the same respectively are not altered or annulled by the provisions of this act." Sect. 25 enacts, "That in every borough shall be elected, at the time and in the manner thereinafter mentioned, one fit person, who shall be and be called 'the mayor' of such borough; and a certain number of fit persons, who shall be and be called 'aldermen' of such borough; and a certain number of other fit persons, who shall be and be called 'the councillors' of such borough; and such mayor, aldermen, and councillors, for the time being, shall be and be called 'the council' of such borough; and the number of persons so to be elected councillors of such borough shall be the number of

persons in that behalf mentioned in conjunction with the name of such borough in the schedules (A.) and (B.) to this act annexed; and the number of persons to be elected aldermen shall be one-third of the number of persons so to be elected councillors." Sect. 28 specifies the qualifications and disqualifications of aldermen and councillors. (See post, 139.) Sect. 37 provides for the annual election of two burgesses qualified to be councillors, [\*132] who shall be and be called "auditors" of such borough; \*and two burgesses qualified to be councillors, who shall be and be called "assessors" of such borough. No burgess to be eligible, or to be elected such auditor or assessor as aforesaid, who shall be of the council, or the town clerk, or the treasurer of such borough. Sect. 50 enacts, "That no person, elected a mayor, alderman, or councillor, or auditor, or assessor, for any borough, shall be capable of acting as such, (a) except in administering the declaration hereinafter contained, until he shall have made and subscribed, before any two or more of such aldermen and councillors (who are hereby respectively authorized and required to administer the same to each other,) a declaration in the words or to the effect following (that is to say: —I, A. B., having been elected mayor [or alderman, councillor, auditor, or assessor] for the borough of ———, do hereby declare, that I take the said office upon myself, and will duly and faithfully fulfil the duties thereof according to the best of my judgment and ability; [and in the case of the party being qualified by estate, say, And I do hereby declare that I am seised or possessed of real or personal estate, (or both, as the case may be,) to the amount of one thousand pounds, or five hundred pounds, as the case may require, over and above what will satisfy all my debts.]" Sect. 51 enacts, "That, except in certain cases therein specially exempted, every such person so elected shall accept such office by making and subscribing the declaration hereinbefore mentioned, within five days after notice of his election, otherwise such person shall be liable to pay the fine as for his non-acceptance of such office; and such office shall thereupon be deemed to be vacant, and shall be filled up by a fresh election to be made in the manner thereinbefore mentioned." Sect. 53 enacts, "That if any person shall act as mayor, alderman, or councillor, or auditor or assessor, for any borough, without having made the declaration hereinbefore required in that behalf, or \*without being duly qualified at the time of making [\*133] such declaration, or after he shall cease to be qualified according to the provisions of this act, or after he shall have become disqualified to hold any such office, he shall for every such offence forfeit the sum of 50*l.*, such sum to be recovered with full costs of suit as therein mentioned: 'Provided always, that all acts and proceedings of any person in possession of the office of mayor, alderman, councillor, auditor, or assessor, and acting as a mayor, alderman, councillor, auditor, or assessor, shall, notwithstanding such disqualification or want of qualification, be as valid and effectual as if such person had been duly qualified.'" (a) Sect. 58 authorizes the council of the borough to appoint a fit person, not being a member of the council, to be the "town clerk" of such borough, who shall hold his office during pleasure; and another fit person, not being a member of the council, to be the "treasurer" of the borough; and also such other officers as have been

(a) See *Miles v. Brough*, 21 Law J., Q. B., 74.



usually appointed in such borough, or as they shall think necessary for enabling them to carry into execution the various powers and duties vested in them by virtue of this act, and may from time to time discontinue the appointment of such officers as shall appear to them not necessary to be re-appointed. Sect. 62 enables the council of boroughs, having a separate court of quarter sessions, to appoint a fit person, not being an alderman or councillor, to be "coroner" of such borough, so long as he shall well behave himself in his office of coroner. The council of any borough are also empowered to appoint committees of a general or special nature, (sect. 70,) charitable trustees (sects. 71, 72, 73,) watch committees and constables for the borough (sect. 76.) They may also make, in the manner specially provided by sect. 90, "such bye-laws as to them shall seem meet for the good rule and government of the borough; and for prevention and suppression of all such nuisances as are not already punishable \*in a summary manner by virtue of any act in force throughout such borough; [\*134] and to appoint by such bye-law such fines as they shall deem necessary for the prevention and suppression of such offences." The crown appoints justices of the peace for the borough (sect. 98,) also salaried police magistrates (sect. 99,) and the recorder (sect. 103.) The justices appoint their own clerk (sect. 102.)

By 6 & 7 Will. 4, c. 104, intituled "An Act for the better administration of the Borough Fund in certain Boroughs," it is enacted (sect. 7) "That, notwithstanding any thing in the said act (5 & 6 Will. 4, c. 76) contained, no person inrolled on the burgess roll for the time being of any borough named in the schedules to the said act, and who shall act as mayor, alderman, or councillor, auditor, or assessor of such borough, shall be liable to any penalty for so acting, on the ground that he was not entitled to be on the burgess list of such borough." Sect. 8, after reciting that "whereas no provision is made in the said act for resigning any corporate office, on payment of a fine or otherwise," enacts, "That every person elected into any corporate office in any of the said boroughs, may, at any time, resign such office, on payment of the fine which he would have been liable to pay for non-acceptance of the same office: provided that no person enabled by law to make an affirmation instead of taking an oath, shall be liable to any fine for non-acceptance of office in any borough, by reason of his refusal, on conscientious grounds, to take any oath or make any declaration required by the said act, or to take upon himself the duties of such office."

By 7 Will. 4 & 1 Vict. c. 78, intituled "An Act to amend an Act for the regulation of Municipal Corporations in England and Wales," various irregular and defective elections which had theretofore taken place were rendered good and valid. It was also enacted (sect. 1,) "That no election of any person into any corporate office, which shall take place after the passing of this act, (17th July, 1837,) shall be liable to be questioned, by reason of any defect in the title or want of title of the person before whom such election may \*have been had, provided that the person, before whom such election shall be had shall be then in the actual possession of or acting in the office giving the right to preside at such election; "provided, nevertheless, that nothing herein contained shall prevent any such election, or act done by any person, from being questioned and set aside by reason of any fraud, or any irregularity, or defect other than is hereinbefore specified." Sect. 2 enacts, "That all elections duly made or

other acts duly done, since the said 25th day of December, 1835, at any meeting of the council or councillors of any borough named in either of the schedules of the said act, by a majority of the members of the council or councillors present at such meeting, the whole number present not being less than one-third part of the number of the whole council, shall be good, notwithstanding that the whole or due number of aldermen may not have been then elected." Sect. 3 enacts, "That all elections had before the passing of this act, or to be had under this act, in any borough named in either of the said schedules, at any time before the election of assessors for such borough, shall be as good as if it had been before the mayor and assessors jointly." Sect. 5 enacts, "That after the passing of this act, no burgess-roll shall be liable to be questioned by reason of any defect of title, or want of title, of the mayor or assessors, by whom the same shall have been revised, or any or either of them, provided that he or they shall have been in the actual possession and exercise of the office of mayor or assessor, as the case may be." Sect. 23 enacts, "That after the passing of this act every application to the Court of King's Bench, for the purpose of calling upon any person to show by what warrant he claims to exercise the office of mayor, alderman, councillor, or burgess in any borough, shall be made *before the end of twelve calendar months* after the election or the time when the person against whom such application shall be directed shall have become disqualified, and not at any subsequent time." Sect. 24 enables a person whose claim [136] has been rejected or name expunged at the revision of the "burgess-roll, to apply to the Court of King's Bench for a mandamus to the mayor for the time being to insert his name upon the burgess-roll. Sects. 25 and 26 provide for holding elections after the proper day appointed by 5 & 6 Will. 4, c. 76.

The 23rd section of the above act, limiting applications for quo warranto informations to twelve calendar months, is of much practical importance. As elections for the office of councillor take place on the 1st day of November in every year, and Michaelmas Term commences on the 2nd day of November, a question may arise whether an application on the first day of Michaelmas Term, to call in question an election of councillors held on the 1st day of November in the preceding year, is in time. (Upon this point, see post, Chap. IV., s. 1.) Under the previous act of 23 Geo. 3, c. 58, s. 1, it was necessary, not only that the rule nisi should be moved for but also made absolute, and the information actually exhibited, before the expiration of the six years thereby limited. (*Rex v. Stokes*, 2 M. & S. 71; *Reg. v. Harris*, 11 Ad. & Ell. 518; 3 Per. & D. 266; 8 Dowl. 499, S. C.) But the language of the present act is different in that respect.

By 5 & 6 Vict. c. 104 it was enacted, (sect. 1,) "That the word 'contract,' in sect. 28 of the act 5 & 6 Will. 4, c. 76, shall not extend, or be construed to extend, to any lease, sale, or purchase of any lands, tenements, or hereditaments, or to any agreement for any such lease, sale, or purchase, or for the loan of money, or to any security for the payment of money only." Sect. 7 enacts, "That from and after the passing of this act, (10th August, 1842,) no councillor, alderman, or mayor, shall be deemed to have been or to be disqualified to be elected, or to be such councillor, alderman, or mayor by reason only of his having had directly or indirectly, by himself or his partner, any share or interest in any lease, sale, or purchase of any lands,

tenements, or hereditaments, or any agreement for any such lease, sale, or purchase, or for the loan of money, or in any security for the payment of money only ; but all elections of councillors, aldermen, or mayors \*as aforesaid, shall be deemed and taken to be and to have been valid [\*137] (unless in cases where judgment may have been obtained before the passing of this act,) notwithstanding any such share or interest in any matters herein last aforesaid." It had previously been decided, that the tenant under a corporation lease was disqualified to be elected or to be a councillor of the borough. (*Rex v. York*, 2 Gale & D. 105.)

The same statute (sect. 2) enacts, "That it shall not be lawful for any member of the council of any borough to vote or to take part in the discussion of any matter before the council, in which such member shall directly or indirectly, by himself or his partner or partners, have any pecuniary interest." Sect. 8 enacts, "That from and after the passing of this act, the office of sheriff of any city, town, county of a city, or county of a town (wherein the council are empowered by law to appoint a fit person to execute the office of sheriff,) shall not be deemed to be an office or place of profit within the meaning of the said act, so as to create any disqualification for any office in the said act mentioned."

By 5 & 6 Vict. c. 111, it is enacted, "That the several charters of incorporation granted in certain boroughs in England, in pursuance of the provisions of 5 & 6 Will. 4, c. 76, and of the acts afterwards passed for amending the said act, and also all grants of separate courts of sessions of the peace, issued or granted to any of the said boroughs, and all acts or proceedings done or had in pursuance thereof respectively before the passing of this act (12th August, 1842,) shall be deemed good and lawful from the time of such several grants, acts, and proceedings respectively." (See *Rutter v. Chapman*, 8 Mee. & W. 1 ; *Reg. v. The Justices of Warwickshire*, 20 Law J., Q. B., 299.)

### · CHAPTER III. ·

[\*138]

IN WHAT CASES AN INFORMATION IN THE NATURE OF QUO WARRANTO WILL BE GRANTED, AND IN WHAT CASES REFUSED.

1. *In what Cases granted.*—THE usurpation of offices and franchises in municipal corporations constitutes the principal ground for applications to the Court of Queen's Bench at Westminster for informations in the nature of quo warranto ; but such a proceeding also lies whenever a party unlawfully takes upon himself to act in any public capacity touching the rule and government of any place in England or Wales, or the administration of justice, or the political rights of third persons.

The usual object of a quo warranto information is to call in question the defendant's title to the office or franchise claimed and exercised by him because of some alleged defect therein, ex. gr. for that at the time of the

election he was disqualified to be elected; or that the election itself was void or irregular; or that the defendant was not duly elected, or not duly appointed, (as the case may be;) or that he has not been duly sworn in, or otherwise lawfully admitted; or that he has since become disqualified, and yet presumes to act. A defective title is in contemplation of law the same as no title whatever, and a party exercising an office or franchise of a public nature is considered as a mere usurper unless he has a good and complete title in every respect.

We propose to consider, in the first place, the *nature of the objections* which may be made to the title of a person acting as a public officer; confining ourselves principally to the offices of mayor, alderman, councillor, [\*139] auditor, and \*assessors of municipal corporations, elected since the 5 & 6 Will. 4, c. 76.

*First* :—The party elected may at the time of the election have been *disqualified to be elected* to the office in question, in which case, if he take upon himself the office, a quo warranto information will be granted against him. No person can be elected *mayor* of any borough unless at the time of the election he is a lawful alderman or councillor of the borough. (5 & 6 Will. 4, c. 76, s. 49; Reg. v. McGowan, 11 Ad. & Ell. 869; Id. 885; 3 Per. 557; Id. 563, S. C.) No person can be elected as an *alderman* unless he & D. is a councillor, or “qualified to be a councillor,” of the borough. (ss. 25, 27.) And he is not so qualified unless on the burgess-roll then in force. (Reg. v. Harvey, 20 Law J., Q. B., 282.) But if actually on the burgess-roll, it seems that his election as mayor, alderman, councillor, auditor, or assessor cannot be questioned on the ground that he was not entitled to be on the burgess-list. (6 & 7 Will. 4, c. 104, s. 7, ante, 134.) No person can be elected as a *councillor* unless he is a burgess of the borough, and actually on the burgess-roll then in force, (Reg. v. Harvey, supra,) and possessed of the requisite amount of property, and free from any of the disqualifications specified in 5 & 6 Will. 4, c. 76, s. 28. That section enacts, “That no person being in Holy Orders, or being the regular minister of any dissenting congregation, shall be qualified to be elected or to be a councillor of any such borough, or an alderman of any such borough, nor shall any person be qualified to be elected or to be a councillor, or an alderman of any such borough who shall not be [entitled to be (a)] on the burgess-list of such borough, nor unless he shall be seised or possessed of real or personal estate, or both, to the following amount, that is to say, in all boroughs directed by this act to be divided into four or more wards, to [\*140] the amount of one thousand pounds, or be \*rated to the relief of the poor of such borough upon the annual value of not less than thirty pounds; and in all boroughs directed to be divided into less than four wards, or which shall not be divided into wards, to the amount of five hundred pounds, or to be rated to the relief of the poor in such borough upon the annual value of not less than fifteen pounds, or during such time as he shall hold any office or place of profit other than that of mayor [or sheriff, 5 & 6 Will. 4, c. 104, s. 8,] in the gift or disposal of the council of such borough, or during such time as he shall have directly or indirectly by him-

(a) See 6 & 7 Will. 4, c. 104, s. 7, ante, 134; and Reg. v. Harvey, 20 Law J., Q. B. 282.

self or his partner any share or interest in any contract or employment with, by, or on behalf of such council; provided that no person shall be disqualified from being a councillor or alderman of any borough as aforesaid by reason of his being a proprietor or shareholder of any company which shall contract with the council of such borough for lighting, or supplying with water, or insuring against fire, any part of such borough."

Although the above section prevents a person having any office or place of profit (other than mayor or sheriff) in the gift or disposal of the council of the borough from being elected as an alderman or councillor of the borough, yet it does not prevent an alderman or councillor from being appointed to or accepting such an office or place of profit, but he thereby vacates his office of alderman or councillor. (*Staniland v. Hopkins*, 9 Mee. & W. 178; *Id.* 193.) The meaning of the word "contract," in the above section, has been materially qualified by 5 & 6 Vict. c. 104, ante, 136.) It does now extend to any lease, sale, or purchase of any lands, tenements, or hereditaments, or to any agreement for such lease, sale, or purchase, or for the loan of money, or to any security for the payment of money only. It had previously been decided that a lease granted by the mayor, aldermen, and councillors of a borough, to a burgess, which contained the usual covenants for payment of rent, &c., was a contract within the meaning of sect. 28, and consequently that the lessee was disqualified to be elected as a councillor of the borough; and on that ground \*a quo warranto information was granted against him. (*Reg. v. York*, 2 Gale & D. [\*141] 105.)

An uncertificated bankrupt is not disqualified from being elected a councillor, if bankrupt at the time when he is elected; no such disqualification being mentioned in sect. 28. (*Rex v. Chitty*, 5 Ad. & Ell. 609; 1 N. & P. 78.) But by sect. 52, if a mayor, alderman, or councillor become bankrupt whilst in office, he thereby becomes disqualified to hold the office, which may be declared void, and afterwards filled up at the time and in manner therein mentioned. (*Reg. v. The Mayor, &c. of Leeds*, 7 Ad. & Ell. 963; 3 N. & P. 145; *Reg. Ricketts*, 3 N. & P. 151.)

No person can be elected as an auditor or assessor of a borough unless he is qualified to be a councillor, not being a member of the council, nor the town-clerk or treasurer of the borough. (5 & 6 Will. 4, c. 76, s. 37.) On the other hand, no burgess is eligible to be elected a member of the council while holding the office of assessor or elective auditor. (7 Will. 4 & 1 Vict. c. 78, s. 15; *Reg. v. Harris*, 7 Ad. & Ell. 960; 3 N. & P. 148.)

No member of the council of a borough can be appointed as town-clerk or treasurer of such borough. (Sect. 58.) Nor as coroner. (Sect. 62.) Nor as clerk to the justices. (Sect. 102.)

By 9 Ann. c. 20, s. 8, a mayor, bailiff, or other annual officer presiding at parliamentary elections was incapable of being chosen into the same office for the year immediately ensuing. And where an outgoing mayor was re-elected as mayor for the succeeding year, it was held that such election was absolutely void.) *Reg. v. The Corporation of Pembroke*, 8 Dowl. 302. But the above section of the statute of Anne was repealed by 3 & 4 Vict. c. 47.

If any disqualified person be a candidate for an office, and obtain a majority of votes at the election, and accept the office, a quo warranto infor-

mation will be granted against him, whether notice of his disqualification was or was not given to the electors at the time of the election. But if no [\*142] such notice was given, the votes for him cannot \*be considered as entirely lost and thrown away, so as to justify the presiding officers in returning as elected another candidate having a less number of votes: and if they do so, a quo warranto information will be granted against the party so declared to be elected, upon his accepting the office. *Reg. v. Harris*, 7 Ad. & Ell. 960; 3 N. & P. 184; *Rex v. Bridge*, 1 M. & S. 76.) But where sufficient notice is given of a candidate's disqualification, and that votes given for him will be thrown away, votes subsequently given for him are lost, and another candidate may be returned as elected, provided he has a majority of good votes after those so lost are deducted. (*Rex v. Hawkins*, 10 East, 211; affirmed Dom. Proc. 2 Dow, 124; *Rex v. Parry*, 14 East, 549.) Public notoriety in the borough of the candidate's disqualification does not seem sufficient for this purpose. (*Reg. v. Harris*, supra.)

*Secondly* :—If the election itself be void or irregular, and the party take upon himself the office, a quo warranto information will be granted against him.

The election of officers in municipal corporations, viz. mayors, aldermen, councillors, &c., should be held at the time and in the manner directed by 5 & 6 Will. 4, c. 76, as amended by 7 Will. 4 & 1 Vict. c. 78. Any material deviation from the provisions of those statutes will render the election invalid. Thus, by sect. 69, a quarterly meeting of the council for the transaction of general business shall be holden at noon on the 9th day of November, "and the first business transacted at the quarterly meeting in November shall be the election of a mayor." A burgess of Exeter, duly qualified to be a councillor, but not being a councillor, was elected as an alderman, at a preliminary meeting of the council held before noon on the 9th November, 1838. At the general meeting on the same day he was elected as mayor. The Court of Queen's Bench held, that the first business to be transacted by the council on the 9th November should have been the election of a mayor; therefore, that both elections were invalid. Two quo warranto informations were granted, and the party was ousted from [\*143] \*both offices. (*Reg. v. McGowan*, 11 Ad. & Ell. 869; *Id.* 885; 3 Per. & D. 557; *Id.* 563, S. C.) So, where a burgess duly qualified was elected first as an alderman and then as mayor of Stafford, at the quarterly meeting held at noon on the 9th November, he was afterwards ousted from the office of mayor by judgment upon a quo warranto information exhibited against him. (*Reg. v. Dudley*, 11 Ad. & Ell. 875; *Id.* 886; 3 Per. & D. 561; *Id.* 564; and see *Rex v. Parkins*, 3 B. & A. 668.) An outgoing alderman may be duly elected mayor at the quarterly meeting on the 9th November; but, although so elected, he cannot vote in the election of the new aldermen for the ensuing year. (*Reg. v. Stanley*, 11 Ad. & Ell. 882; *Id.* 886; 3 Per. & D. 561; *Id.* 564, S. C.) The mode of electing aldermen is prescribed by 7 Will. 4, and 1 Vict. c. 78, s. 14; but before that statute it was held, that the election of aldermen by lists, there being no voting for them singulatim, but each elector having an opportunity of proposing and voting for his own candidate, and of objecting to any of the lists proposed, was valid under the Municipal Corporation Act. (*Reg. v. Brightwell*, 10 Ad. & Ell. 171; 2 P. & D. 418.) An election by lists is bad

where an *indefinite* number of persons are to be elected as honorary free-men, or in any other capacity ; in such cases each candidate should be proposed separately. (Rex v. Monday, Cowp. 530 ; Rex v. Player, 2 B. & A. 707.) But this is not essential where a definite number are to be elected on a particular day. (Reg. v. Brightwell, *supra*.) An election of councillors was held to supply two ordinary vacancies and one extraordinary vacancy. The latter had not been duly declared, and notice thereof given according to the act. A majority of voting papers at the election were for A., B., and C., but a majority of voting papers, containing two names only, were for Y. and Z. The alderman and assessors of the ward declared A., B., and C. to be duly elected. Afterwards the assessors declared that Y. and Z. were duly elected. A., B., and C. took upon themselves the office ; Y. and Z. did so likewise, but were not permitted to vote and act as councillors. Under these \*circumstances, the court refused a mandamus to allow Y. and Z. to act, but at their instance granted a quo [\*144] warranto information against A., B., and C. (Rex v. The Mayor, &c., of Winchester, 7 Ad. & Ell. 215 ; 2 N. & P. 274.) In another case, where an election was held to supply one ordinary vacancy, and one extraordinary vacancy, which had not been duly declared, it was held that voting papers containing the names of more than one candidate were not available, and that the candidate who had the greatest number of single votes was duly elected. (Reg. v. The Mayor, &c., of Leeds, 7 Ad. & Ell. 963 ; 3 N. & P. 145.) An election of four councillors of Lichfield took place on the 1st November, 1841, viz., three to supply the ordinary vacancies happening on that day, and one to supply an extraordinary vacancy which had within ten days previously been duly declared and published. Such election was held invalid, because the voting papers did not on the face of them specify and distinguish which of the persons voted for were intended to fill the ordinary and which the extraordinary vacancy. (Reg. v. Rowley, 20 Law J., Q. B. 198.)

The 25th section of the Municipal Corporation Act required that the councillors (not the council,) *immediately after the first election of aldermen* under the act, should appoint who should go out of office in the year 1838. The councillors of the borough of Carnarvon omitted to make such appointment ; but the councillors appointed in a subsequent year attempted to remedy the defect by then making the necessary appointment, to which no objection was made at the time, and the alderman thereby appointed to go out of office did so accordingly, and others were elected in their place ; the Court granted quo warranto information against such newly elected aldermen. (Reg. v. Alderson, 1 Q. B. 878 ; 1 Gale & D. 429. (The stat. 7 Will. 4 and 1 Vict. c. 78, s. 10, provides for a difficulty like this as to councillors, but has no similar enactment as to aldermen.)

Formerly an election was invalid if the mayor or other \*presiding officer was not legally entitled and qualified to fill such office. (Rex [\*145] v. The Corporation of Bridgewater, 8 Doug. 379 ; Rex v. Smith, 5 M. & S. 271.) But by 5 & 6 Will. 4, c. 76, s. 53, it is provided, that all acts and proceedings of any person in possession of the office of mayor, alderman, councillor, auditor, or assessor, and acting as a mayor, alderman, councillor, auditor, or assessor, shall, notwithstanding such disqualification or want of qualification, be as valid and effectual as if such person had been

duly qualified. And by 1 Vict. c. 78, s. 1, no election of any person into any corporate office which shall take place after the passing of that act (17th July, 1837,) shall be liable to be questioned by reason of any defect in the title or want of title of the person before whom such election may have been had, provided that the person before whom such election shall be had shall be then in the actual possession of or acting in the office giving the right to preside at such election. (See *Reg. v. Jones*, 7 Ad. & Ell. 430; 2 N. & P. 577; *Reg. v. Hooker*, 9 Ad. & Ell. 680; *Miles v. Broug*, 21 Law J., Q. B., 74.)

If a presiding officer who by the constitution of the borough forms an integral part of an elective assembly depart from it after the meeting has been regularly formed and the election entered upon, but before it is completed, or if he improperly absent himself, an election made after his departure or during his absence is void. (*Rex v. Buller*, 8 East, 389; *Rex v. Williams*, 2 M. & S. 141.)

*Thirdly*:—The party may not have been duly elected. This may happen although he was "qualified" to be elected, and the election itself was neither void nor irregular; as where he did not obtain a majority of *legal* votes. The burgess-roll is *prima facie* evidence of a party's right to vote as a burgess at an election. Indeed no question can be put to him as to his right to vote, but only as to his signature to the voting paper delivered in by him, and his identity with the person named in the burgess-roll, and whether he has already voted at that election. (See 5 & 6 Will. 4, c. 76, [\*146] s. 34.) But the \*burgess roll is not conclusive as to the voter's title, upon an application for a *quo warranto* information against the party elected, (*Reg. v. Ledgard*, 8 Ad. & Ell. 535; 3 N. & P. 513;) and therefore the relator may show by affidavit that although the defendant had a colourable majority at the election, yet that certain of his votes were bad ones for specified reasons, and that deducting such bad votes, the relator or some other candidate had the majority of legal votes. (*Reg. v. Grierson*, T. T. 1842, Q. B.; *Reg. v. Quayle*, 11 Ad. & Ell. 508; *Rex v. Mashiter*, 6 Ad. & Ell. 153; 1 N. & P. 314.) So it may be shewn that some of the voting papers for the defendant were defective and insufficient, and that, deducting them, the defendant had not a majority of legal votes; as where some of the voting papers contained two names, whereas there was but one legal vacancy, the other not having been duly declared and published. (*Reg. v. The Mayor, &c., of Leeds*, 7 Ad. & Ell. 963; 3 N. & P. 145.) The court granted a *quo warranto* information to inquire into the validity of an election of a town councillor where the vote of one of the burgesses was at his special request taken at his bed-side, he being too ill to be able to go to the polling-booth. (*Reg. v. Prockter*, 17 Law J., Q. B., 227.) So where the voter was brought in a sedan-chair and his vote taken there just outside the polling-booth. (*Reg. v. Hill*, 30th Jan., 1843, Q. B.) So where a voter had delivered in his voting-paper after the clock had struck two of the four strokes denoting four o'clock. (S. C.) But in such case it must be remembered that an application for a *quo warranto* information will not be granted unless it be shown that deducting the vote or votes in question another candidate had a majority of legal votes. (*Rex v. Jefferson*, 2 N. & M. 487; *Rex v. Mashiter*, 6 Ad. & Ell. 153; 1 N. & P. 314.) If a person be elected as a mayor of a borough by a majority consisting partly of bad votes,



without which he would be in a minority, a quo warranto information will be granted against him ; but there is no objection to an outgoing alderman on the 9th November voting in the election of mayor held on that \*day. (Reg. v. Maddy, 11 Ad. & Ell. 878 ; Id. 886 ; 3 Per. & [\*147] D. 563 ; Id. 564, S. C.) Where the defendant was elected as an alderman on the 9th November, but Dr. Maddy, an outgoing alderman, who had just been elected mayor, voted for him, and then the votes being equal gave a casting vote as mayor, the court held that Dr. Maddy was not entitled to vote as an outgoing alderman at such an election, and therefore that the number of legal votes was not equal, nor did the occasion arise for a casting vote : consequently the defendant had a minority of good votes, and was not duly elected. Judgment of ouster was therefore given against him on a quo warranto information. (Reg. v. Stanley, 11 Ad. & Ell. 882 ; Id. 886 ; 3 Per. & D. 561 ; Id. 564, S. C.)

When an office or franchise is full *de facto*, and another person disputes the validity of the election or appointment, his remedy is by a quo warranto information, and not by a mandamus. Thus, where there were two candidates for the office of recorder of Colchester, and the question was who had the majority of legal votes : one of the candidates was declared to be duly elected, and was *admitted and sworn into the office* ; whereupon the other applied for a mandamus to the mayor to admit and swear him into the office, upon affidavits showing that several of the votes for his opponent were bad ones, and that the applicant had the majority of legal votes. The court refused a mandamus, the office being full *de facto*, but they granted a rule for a quo warranto information. (Rex v. The Mayor of Colchester, 2 T. R. 259.) In a somewhat similar case, where the office was not *de facto* full of either party, the court granted a mandamus. (Rex v. The Mayor of York, 4 T. R. 699.) In Rex v. Bankes, 3 Burr, 1454, an application was made for a mandamus to proceed to the election of a mayor of Corfe Castle, there being at that time a mayor *de facto* ; but Lord Mansfield C. J., said—" If the election were doubtful and fit to be tried upon an information in the nature of a quo warranto, the court ought not to grant a mandamus ; but if it were a *mere colourable election and clearly void*, they ought." \*The same [\*148] distinction was taken in Rex v. The Mayor, &c. of Oxford, (6 Ad. & Ell. 349 ; 1 Nev. & P. 474,) where it was held that if a corporator be ousted and another elected in his stead, and such election be merely colourable, a mandamus will go to permit the ousted party to exercise his office, but not to restore him to his office. If such ouster and election be *bona fide*, the court will not grant a mandamus in favour of the party displaced, the proper proceeding is by a quo warranto against the party holding the office *de facto*. In that case Coleridge, J., said—" In Rex v. The Mayor of York, (4 T. R. 699,) two persons claimed to have been legally elected as recorder ; the corporation had certified the election of one to the secretary of state for the approbation of the crown, and the court thought that a proper case for a mandamus to the corporation to put the corporate seal to the election of the other, in order that the title of the contending parties might be tried on the return. But there the office was not full *de facto* of either party. The certificate was only a step towards the completion of the title, and the crown had not signified its approbation." (6 Ad. & Ell. 354.) Where the alderman and assessors of a ward in a borough had declared to A., B., and C. to

be duly elected as councillors, and they accordingly took upon themselves the office and made the declaration required by law, and acted as councillors, but Y. and Z. claimed to have been duly elected and to act as councillors; the court refused a mandamus to allow Y. and Z. to act as councillors, even assuming that they ought to have been declared duly elected, for the office was full de facto of A., B., and C. But an information in the nature of a quo warranto was granted. (*Rex v. The Mayor, &c. of Winchester*, 7 Ad. & Ell. 215; 2 Nev. & P. 274, S. C.; and see *Reg. v. The Councillors of Derby*, 7 Ad. & Ell. 419; *Reg. v. Phippen*, 7 Ad. & Ell. 966.) A mandamus to permit the applicant to exercise his office is proper where he was elected and admitted de facto, after which another person was declared [\*149] to have been duly elected to the same office and permitted to act, but it appeared that such last-mentioned election was clearly void. (*Reg. v. The Mayor, &c. of Leeds*, 11 Ad. & Ell. 512.)

*Fourthly* :—The party, although duly elected, may not have been duly sworn in or otherwise lawfully admitted to the office in question. In such case, if he presume to act, a quo warranto information may be obtained against him. (*Mayor of Penryn's case*, 1 Stra. 582, affirmed in Parliament, 2 Bro. P. C. 294, Tomline's edit.; *Rex v. Reek*, 2 Ld. Ray. 1447; *Rex v. Hearle*, 1 Str. 625; 11 Mod. 390; *Rex v. Clarke*, 2 East, 75; *Rex v. Courtenay*, 9 East, 246; *Id.* 267.) A party becomes a corporate officer when he is sworn in or otherwise lawfully admitted, and not when he is elected. (*Rex v. Swyer*, 10 B. & C. 486.)

By the Municipal Corporation Act (sect. 50), it is enacted, "That no person elected a mayor, alderman or councillor, or auditor or assessor for any borough, shall be capable of acting as such, except in administering the declaration hereinafter contained, until he shall have made and subscribed before any two or more such aldermen or councillors (who are hereby respectively authorized and required to administer the same to each other) a declaration in the words or to the effect following, (that is to say) :

"I, A. B., having been elected mayor [or alderman, councillor, auditor, or assessor] for the borough of —, do hereby declare, that I take the said office upon myself, and will duly and faithfully fulfil the duties thereof, according to the best of my judgment and ability: [*and in the case of the party being qualified by estate, say,*] and I do hereby declare that I am seised or possessed of real or personal estate, or both [*as the case may be,*] to the amount of one thousand pounds, or five hundred pounds, [*as the case may require,*] over and above what will satisfy all my debts.]

"And that every alderman who shall have made and subscribed the foregoing declaration in respect of estate shall once in every period of three years, if required in writing so to do by any two members of the council, make and subscribe a declaration that he is qualified to the same [\*150] \*amount in real or personal estate, or both, as the case may then be, as the amount mentioned in the declaration originally made and subscribed by him; provided always, that nothing in this act contained shall be construed to dispense with the obligation of any person to make and subscribe the declaration provided and enjoined by an act made in the ninth year of his late Majesty George the Fourth, intituled 'An act for repealing so much of several Acts as imposes the Necessity of receiving the Sacrament of the Lord's Supper as a Qualification for certain Offices and Employments.'" Sect. 51 enacts, "That every person duly qualified who shall be elected to

the office of alderman, councillor, auditor or assessor, and every councillor who shall be elected to the office of mayor for any borough, shall accept such office to which he shall have been elected, or shall in lieu thereof pay to the mayor, alderman and burgesses of such borough, such fine not exceeding fifty pounds in case of aldermen, councillors, auditors, or assessors, and such fine not exceeding one hundred pounds in case of mayor, as the council of such borough by a bye-law to be made as hereinafter provided shall declare in that behalf, and such fine if not duly paid shall be levied by the warrant of any justice having jurisdiction within the borough, who is hereby required on the application of the council to issue the same, by distress and sale of the goods and chattels of the person so refusing to accept office, with the reasonable charges of such distress; and every such person so elected *shall accept such office by making and subscribing the declaration hereinbefore mentioned within five days after notice of his election*, otherwise such person shall be liable to pay the said fine as for his non-acceptance of such office, and such office shall *thereupon be deemed to be vacant and shall be filled up by a fresh election*, to be made in the manner hereinbefore mentioned: provided always, that no person disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body, shall be liable to such fine as aforesaid; provided also, that every person so elected to any such office who shall be above the age of sixty-five years, or \*who shall have already served such office respectively, or paid the [\*151] fine for not accepting such office respectively, within five years from the day on which he shall be so re-elected, shall be exempted from accepting or serving the same office if he shall claim such exemption within five days after notice of his election: provided always, that nothing in this act contained shall extend to compel the acceptance of any office or duty whatever in any borough by any military, naval, or marine officer in his Majesty's service on full pay, or by any officer or other person employed and residing within any of his Majesty's dock-yards, victualling establishments, arsenals, or barracks." (And see 6 & 7 Will. 4, c. 134, s. 8, ante, 134.)

The stat. 9 Geo. 4, c. 17, after referring to the acts usually called the Corporation and Test Acts, viz. 13 Car. 2, stat. 2, c. 1; 25 Car. 2, c. 2; and 16 Geo. 2, c. 30; and reciting the expediency of repealing so much of them as imposes the necessity of taking the sacrament of the Lord's Supper, according to the rites or usages of the Church of England, proceeds to repeal such parts of the said acts. (Sect. 1.) The second section substitutes in lieu thereof *a declaration* "upon the true faith of a Christian," not to injure, weaken, or disturb the Protestant Church as it is by law established in England, and enacts "That every person who shall thereafter be *placed, elected, or chosen* in or to the office of mayor, alderman, recorder, bailiff, town-clerk, or common councilman, or in or to any office of magistracy, or place, trust, or employment relating to the government of any city, corporation, borough, or cinque-port, within England and Wales or the town of Berwick-upon-Tweed, shall *within one calendar month next before or upon his admission* into any of the aforesaid offices or trusts make and subscribe the said declaration." Sect. 3 enacts, "That the said declaration shall be made and subscribed as aforesaid, in the presence of such person or persons respectively who by the charters or usages of the said respective cities, corporations, boroughs, and cinque-ports ought to administer the oath

[\*152] for the due execution of the said offices or places respectively, \*and in default of such, in the presence of two justices." Sect. 4 enacts "That if any person *placed, elected, or chosen* into any of the aforesaid offices or places shall omit or neglect to make and subscribe the said declaration in manner above mentioned, *such placing, election, or choice shall be void*; and that it shall not be lawful for such person to do any act in the execution of the office or place into which he shall be so chosen, elected, or placed." Sect. 5 enacts, "That where it would heretofore have been necessary for any person to take the sacrament of the Lord's Supper in respect of any office, &c., he shall within six calendar months after his admission to such office, &c., make and subscribe the aforesaid declaration, or in default thereof his appointment to such office, &c., shall be wholly void."

Strictly speaking, every person elected to any corporate office (except sheriff, 5 & 6 Will. 4, c. 28,) is bound to make the declaration prescribed by 9 Geo. 4, c. 17, "within one calendar month next before or *upon his admission*," and if required to do so when he applies to be admitted, and he refuse (not having made such declaration within one calendar month previously,) his election may be declared void, and another person elected to supply his place. (*Humphery v. The Queen*, in error, 10 Ad. & Ell. 335; 3 Per. & D. 691.) If admitted without making such declaration his title is defeasible, and he may be ousted by judgment upon a quo warranto information. (*Reg. v. The Mayor, &c., of Cambridge*, 4 Per. & D. 294; *Id.* 305, per Coleridge, J.) But ever since the year 1743 annual indemnity acts have regularly passed, and one is always in force, by virtue whereof a party elected may make the necessary declaration nunc pro tunc, the effect of which is to render the election and admission good ab initio, provided such office has not been then already vacated by judgment or legally filled up and enjoyed by another. (*Rex v. Parry*, 14 East, 550; *Rex v. Bridge*, 1 M. & S. 76; *Rex v. Hawkins*, 10 East, 211, S. C., in error, 2 Dow, 124; *Reg. v. The Mayor, &c., of Cambridge*, 4 Per. & D. 294.) The annual \*indemnity act is prospective as well as retro-  
 [\*153] spective, and extends to persons who may be in default during the time for which it is made, and is not limited to those who had incurred penalties or disabilities before it was passed, it being the intention of the legislature to extend the time for taking the oaths and performing the other acts required of persons filling certain offices. (*In Re Steavenson*, 2 B. & C. 34.)

By 10 Geo. 4, c. 7, Roman Catholics elected to any corporate office are required within one calendar month next before or *upon their admission* to take the oath thereby appointed, instead of the oaths of allegiance, supremacy, and abjuration. In case of refusal or neglect, their election will become void or voidable in precisely the same manner as under the stat. 9 Geo. 4, c. 17.

The admission of a corporate officer cannot be avoided solely on the ground that one of the two aldermen or councillors, before whom he made the declaration, &c., had not a good and valid title to his office. (See 5 & 6 Will. 4, c. 76, s. 53; *Rex v. Slythe*, 6 B. & C. 240; 9 D. & R. 226.)

*Fifthly*:—A person, although duly elected and admitted to an office, may *subsequently become disqualified to continue in such office*, in which

case, if he afterwards presume to act, a quo warranto information will be granted against him.

By the Municipal Corporation Act (sect. 52,) it is provided and enacted, "That if any person holding the office of mayor, alderman, or councillor for any borough shall be declared bankrupt, or shall apply to take the benefit of any act for the relief of insolvent debtors, or shall compound by deed with his creditors, or being mayor shall be absent for more than two calendar months, or being an alderman or councillor for more than six months at one and the same time, unless in case of illness, from the borough of which he shall be mayor, alderman, or councillor, then and in every such case such person shall *thereupon immediately become disqualified, and shall cease to hold the office* of such mayor, \*alderman, or councillor as aforesaid, and in the case of such absence shall be liable to [\*154] the same fine, to be recovered in the same manner, as if he had refused to accept the said office, *and the council thereupon shall forthwith declare the said office to be void, and shall signify the same by notice* in writing under the hands of three or more of them, countersigned by the town-clerk, to be affixed in some public place within the borough, and the said office shall thereupon become void; but every person so becoming disqualified and ceasing to hold such office on account of his being declared a bankrupt, or of his applying to take the benefit of any act for the relief of insolvent debtors, or having compounded with his creditors as aforesaid, shall, on obtaining his certificate or on payment of his debts in full, be capable (if otherwise qualified) of being re-elected to such office, and every person becoming disqualified to hold such office on account of absence as aforesaid, shall on his return to such borough be capable of being re-elected to such office, provided he shall then be otherwise qualified."

In cases falling within the above section, the office must be *declared void by the council* in the manner therein mentioned before there will be any vacancy in the office which can lawfully be filled up. (Reg. v. The Mayor, &c., of Leeds, 7 Ad. & Ell. 963; 3 N. & P. 145; Rex v. The Mayor, &c., of Winchester, 7 Ad. & Ell. 215; 2 N. & P. 274.) Such a declaration duly made is equivalent to judgment of ouster upon a quo warranto information. (Reg. v. Ricketts, 3 N. & P. 151.)

It was formerly held that the *non-residence* of a free-burgess within a borough was not a sufficient ground for an information in the nature of a quo warranto against such free-burgess, without a previous amotion, or some other proceeding previously had against him for such non-residence. (Rex v. Ponsonby, in error, 2 Bro. P. C. 311; 1 Ld. Ken. 1; 1 Ves. J. 1; Sayer's R. 245.) So the court would not grant such an information against an alderman or other officer of a borough for non-residence until he had been \*amoved by the corporation. (Rex v. Heaven, 2 T. R. 772.) [\*155] "Wherever a person has been *once duly elected* into a corporate office, and forfeits it by misconduct, his amotion by the corporation is a previous and necessary step to be taken before this court will grant an information in the nature of a quo warranto against him. For where a corporator neglects the duties of his office, the corporation should first take cognizance of it, and deprive him, and then it may properly be brought before this court." (Per Ashhurst, J., 2 T. R. 776, S. C.) Where, however, the validity of the defendant's election to a corporate office or fran-

chise depended upon a *bonâ fide* residence in the borough *previous* to such election, the court would entertain the question; and if upon full consideration of all the facts appearing on the affidavits they were satisfied there had been a sufficient *bonâ fide* residence, they would discharge the rule. (*Rex v. Sargent*, 5 T. R. 466; *Rex v. Orde*, 8 Ad. & Ell. 420, note.) If not so satisfied, they would make the rule absolute in order that the question of *bonâ fide* residence might be submitted to a jury. (*Rex v. The Duke of Richmond*, 6 T. R. 560.)

A person who has been duly elected and admitted as an alderman or councillor of a borough, may afterwards become disqualified to continue in such office under sect. 28 of the Municipal Corporation Act. (*Ante*, 139.) But in such cases the council cannot declare the office vacant and proceed to a fresh election, as under sect. 52. (*Reg. v. Ricketts*, 3 N. & P. 151.) If the party so becoming disqualified continue to act, a *quo warranto* information will be granted against him.

If an alderman or councillor cease to be on the burgess-roll, he becomes disqualified, (*Rex v. The Mayor &c. of Oxford*, 6 Ad. & Ell. 349; 1 N. & P. 474; *Reg. v. Ricketts*, 3 N. & P. 151; *Reg. v. Harvey*, 20 Law J., Q. B., 282;) but whilst actually on the burgess-roll for the time being, his title to other corporate offices cannot be questioned, solely on the ground that he is *not entitled* to be on the burgess-list. (6 & 7 Will. 4, c. 104, s. 7; *ante*, 134.)

[\*156] A *quo warranto* information will be granted against a \*corporate officer who accepts a second *incompatible* office. Where different persons filling two offices would be in the relation of master and servant to each other, such offices are incompatible, and cannot be held together by the same person. Thus, the offices of alderman and town-clerk of a borough are incompatible, and therefore an alderman vacates his office by accepting the appointment of town-clerk. (*Rex v. Tizzard*, 9 B. & C. 418; *Rex v. Pateman*, 2 T. R. 777.) So the offices of a jurat and town-clerk are incompatible; and the acceptance of the latter (although an inferior office) will vacate the former. (*Milward v. Thatcher*, 2 T. R. 81.) So the offices of capital burgess and town-clerk seem incompatible. (*Rex v. Bond*, 6 D. & R. 333; *Rex Lawrence*, 2 Chit. R. 371.) So the offices of town councillor and clerk of the Court of Requests of a borough (appointed by the council of the borough) are incompatible; and therefore where the council appoint a councillor to be such clerk, and he accepts the appointment, he thereby vacates his office of town councillor. (*Staniland v. Hopkins*, 9 Mee. & W. 178; *Id.* 193.) But the offices of capital burgess and steward have been held not to be necessarily incompatible. (*Rex v. Trelawney*, 3 Burr. 1615.) In *Rex v. Jones*, (1 B. & Adol. 677,) the court held that the office of town-clerk, clerk of the peace and prothonotary of the borough of Carmarthen, were not incompatible with the office of a common councilman of the borough; for that the common council neither appointed such town-clerk, &c., nor paid him, nor had any power to make bye-laws to regulate his fees; nor did they audit his accounts. (But now see 5 & 6 Will. 4, c. 76, s. 58; 8 Ad. & Ell. 185, note: *Staniland v. Hopkins*, *supra*.) The acceptance by a person holding a corporate office of another incompatible office *not corporate*, does not operate as an absolute avoidance of the corporate office, though it may be ground of motion; and the acceptance

of an incompatible office does not operate as an absolute avoidance of a former office in any case where the party could not divest himself of that office by his own act, and without the concurrence of another [\*157] authority to his resignation, or amotion, unless such authority be privy and consenting to the second appointment. (*Rex v. Patteson*, 4 B. & Adol. 9.) "It would be an anomaly in the law, if a public officer, who could not directly resign, or be removed without the concurrence or privy of a superior authority, should be able to accomplish the same object indirectly by an acceptance of an incompatible office: a sheriff for instance, who is indictable for not accepting or exercising his office, might relieve himself, without the concurrence of the Crown, by being elected to the office of coroner, and other instances of the same kind might be put." "Upon principle, not conflicting with any of the authorities, it seems that an officer cannot avoid his office by accepting another, unless his office be such as he could determine by his own act simply, or unless that authority concurs in the new appointment which could accept the surrender of or amove from the old one." (Per Parke, J., S. C. pp. 23. 26.) An appointment by a corporation of an alderman to be their town-clerk is (when accepted by him) equivalent to an amotion from the office of alderman. (*Rex v. Pateman*, 2 T. R. 777.) So, an appointment by the council of a borough of one of the councillors to be clerk of the Court of Requests of the borough, when accepted by him, vacates his office of councillor. (*Staniland v. Hopkins*, 9 Mee. & W. 178; *Id.* 193.) The offices of alderman of a city and county treasurer are incompatible: so the office of justice of the peace and county treasurer are incompatible; but the appointment of treasurer, in such cases, seems void; for an alderman or justice is incapable of being elected county treasurer. (*Rex v. Patteson*, supra.) So, if a justice of the peace be appointed overseer by an order of sessions, it seems that the court would quash such order, upon the ground that as justice he was disqualified or exempt from being overseer, the offices being incompatible. (*Rex v. Gayer*, 1 Burr. 245, recognized by Parke, J., in *Rex v. Patteson*, 4 B. & Adol. 23.) To support an application for a quo warranto information for exercising a public office, after having accepted a second incompatible \*one, the affidavits must clearly shew that the two offices are incompatible; and that the first office was one which [\*158] the defendant could resign either of his own accord simply, or with the concurrence of those consenting or privy to his second appointment. (*Rex v. Patteson*, supra.) And that he was legally appointed to the second office (*Rex v. Day*, 9 B. & C. 702; 4 M. & R. 541,) and duly accepted it. (See post, Ch. IV. s. 3.) Where a capital burgess was elected an alderman under an election which afterwards turned out to be void, and he accepted such office, and concurred in the election of another person to supply his place of capital burgess (the two offices being incompatible):—held, that he ceased to be a capital burgess. (*Rex v. Hughes*, 5 B. & C. 887; *D. & R.* 443: and see *Rex v. Hughes*, 8 D. & R. 708.)

Before the passing of the Municipal Corporation Act, an elected officer might resign by parol, or in writing. And if, after such resignation had been accepted, he presumed to act as though he continued in office, a quo warranto information might be obtained against him. (*Rex v. Payne*, 2 Chit. R. 367; *Rex v. Rippen*, 1 Ld. Raym. 563; *Salk.* 443, S. C.) But

it seems that a mayor, alderman, councillor, auditor, or assessor, who has been once duly elected and admitted, and has not since become legally disqualified to hold the office, cannot now resign, except upon payment of a fine pursuant to 6 & 7 Will. 4, c. 104, s. 8. (Ante, 134.)

A quo warranto information lies in case of non-user or long neglect of a franchise, or mis-user or abuse of it, 3 Blac. Com. c. 17; *Peter v. Hendall*, 6 B. & C. 703; *Maydenhead Case*, Palm. 76; 2 Inst. 496; 1 Salk. 374; as where the Mayor and common council of a borough improperly admitted foreigners and strangers to the freedom of the town. (*Anon.*, 12 Mod. 225; 1 Salk. 374; Bull. N. P. 208.)

*For what Offices and Franchises.*—We now proceed to consider in respect of what offices and franchises a quo warranto information will be granted against a person having a defective title.

[\*159] \*The most common and frequent instances are those of mayor, alderman, councillor, auditor, or assessor of a municipal corporation. We have already considered the cases relating to such offices, in discussing the nature of the objections which may be made to the title of a public officer. (Ante, 139 to 158.)

A quo warranto information may be obtained against any person who unlawfully claims to be and to act as a freeman of a borough, (*Reg. v. Pepper*, 7 Ad. & Ell. 745; 3 N. & P. 154; *Rex v. Hill*, 5 T. R. 376, note; 2 Gude, 252. 264. 270. 282;) or as a burgess, if on the burgess-roll, and he has voted or otherwise acted as a burgess. (*Reg. v. Pepper*, supra; *Rex v. Parkyn*, 2 B. & Adol. 690; *Rex v. Warlow*, 2 M. & S. 75; *Rex v. Knight*, 4 T. R. 419; *Rex v. Adam Smith*, 5 T. R. 376, note; 2 Gude, 272. 277. 281. 287.) But as, since the Municipal Corporation Act, the office or franchise of a burgess is an annual one, and his title may be questioned in the court of revision for the borough, the Court of Queen's Bench will not now grant a quo warranto information against him, unless the application be made immediately after the defendant was inrolled and acted as a burgess, or any delay in making the application be satisfactorily accounted for: therefore, where the defendant was inrolled in October, and acted and voted as a burgess on the 1st of November, an application made towards the end of the following Hilary term was held too late, notwithstanding the stat. 7 Will. 4 and 1 Vict. c. 78, s. 23. (*Reg. v. Hodson*, T. T. 1842; 20 Law J., Q. B., 219; and see *Reg. v. Anderson*, 2 Gale & D. 113.) Questions respecting the title of a burgess more frequently arise upon applications for a mandamus to insert the party's name upon the burgess-roll pursuant to 1 Vict. c. 78, s. 24. (See *Reg. v. The Mayor of Harwich*, 8 Ad. & Ell. 919; 1 P. & D. 134; *Reg. v. The Mayor of Eye*, 9 Ad. & Ell. 670; 2 P. & D. 348; *Reg. v. The Mayor of Bridgnorth*, 10 Ad. & Ell. 66; 2 P. & D. 317; *Reg. v. The Mayor of Lichfield*, 1 Q. B. 453; 1 Gale & D. 28.) A quo warranto information has been granted against a free burgess, (*Rex v. Slythe*, 6 B. & C. 240; \**Rex v. Tate*, 4 East, 337; *Rex v. Bond*, 2 T. R. 767; 2 Gude, 215. 263;) a capital burgess, (*Rex v. Benney*, 2 B. & Adol. 684; *Rex v. Lawrence*, 2 Chit. R. 371; *Rex v. Bond*, 6 D. & R. 333; *Rex v. Trelawney*, 3 Burr. 1615; 2 Gude, 274. 279;) and against one claiming a right to vote by virtue of a burgage tenement. (*Borough of Horsham case*, 3 T. R. 599, note.) So, against a master and



councillor of a borough, (2 Gude, 278;) a commonalty steward of a borough, (6 Went. Prec. 81;) an assistant of a borough, (2 Gude, 255;) the recorder of a borough, (Rex v. Sandys, 2 Barnard. 301: Rex v. The Mayor of Colchester, 2 T. R. 259;) the town-clerk or clerk of the peace of a borough, (Reg. v. Thomas, 8 Ad. & Ell. 183; 3 N. & P. 288: Rex v. Harris, 6 Ad. & Ell. 475; 1 N. & P. 576: Rex v. Shebbeare, Glover on Municipal Corporations, 704. 706: Rex v. Davies, 1 Man. & Ry. 538: Rex v. Lloyd, 2 Barnard. 310; 2 Gude, 262;) the sheriff of a borough, (Rex v. Whitwell, 5 T. R. 85;) the coroner of a borough or county, (Reg. v. Taylor, 11 Ad. & Ell. 949; 3 Per. & D. 652, S. C.: Rex v. Sayer, 5 T. R. 376, note;) the portreeve of a borough, (9 Ann. c. 20, ss. 1. 4: Rex v. Richards, 9 East, 469: Rex v. Mein, 3 T. R. 596; 5 T. R. 376, note;) 2 Gude, 261. 273;) the bailiff of a borough, (9 Ann. c. 20, ss. 1. 4: Rex v. The Duke of Richmond, 6 T. R. 560: Rex v. Sargent, 5 T. R. 466; Id. 376, note; 2 Gude, 280. 310;) the bailiff or sub-bailiff of a borough, (Rex v. Highmore, 5 B. & A. 771; 1 D. & R. 438; 2 Gude, 271;) the bailiff of a borough and manor, he being as such a prescriptive officer of the court-leet, (Rex v. Bingham, 2 East, 308;) the bailiff of a borough, such office "touching the election and return of burgesses to serve in Parliament for the borough," (Rex v. M-Kay, 4 B. & C. 351; 6 D. & R. 432, S. C. ;) the bailiff of a ville, (Rex v. Boyles, 2 Stra. 836; 2 Ld. Raym. 1559: Rex v. Thompson, 5 T. R. 376, note.) So, against constables of all descriptions, ex. gr. the constable of a parish, (Rex v. Goudge, 2 Stra. 1213;) of a borough, (Rex v. Wallis, 5 T. R. 375; Id. 376, note;) of a township, (Rex v. Lane, 5 B. & A. 488;) the chief constable of a hundred, (Rex v. \*Ragsdale and Rex v. Baynes, 5 T. R. 376, note;) of a wapentake. [\*161] (Reg. v. Watkinson, 10 Ad. & Ell. 288.)

So it lies against a person for unlawfully exercising the office of justice of the peace of a borough, (Reg. v. ———, 2 Cowp. R. 368: Rex v. Pateson, 4 B. & Adol. 9;) justice of the peace of a liberty, lordship, or manor, (Rex v. Mashiter, 6 Ad. & Ell. 153; 1 N. & P. 314, S. C. ;) so for holding a court of record within a charter borough, and presiding therein in the absence of the bailiffs, the defendant not being one of them; but judgment of ouster given thereon will be without costs, (Rex v. Williams, 1 Burr. 402; 2 Ld. Ken. 68;) so for holding a court-leet after long disuser, without shewing a title from the original grant: (Rex v. Bridge, 1 W. Blac. 46;) but in another similar case the court refused the information at the instance of the lord of the hundred, there appearing to be another remedy, (Rex v. Cann, Andrews, R. 14; 3 Burr. 1822;) and so where the court-leet had been held time out of mind. (Rex v. Medlicot, 2 Barnard. 221.) It lies against the steward of a court-leet (but not of a court baron,) (Rex v. Hulston, 1 Stra. 621; Anon., 11 Mod. 383;) the chief clerk or deputy-clerk of a court-leet, (Rex v. Althrop and Another, 2 Ld. Ken. 17;) the bailiff of a court-leet, he being a prescriptive officer and having power to summon and select the jury, (Rex v. Bingham, 2 East, 308;) the registrar and clerk of a court of requests, (Rex v. Hall, 1 B. & C. 237;) so against one claiming to return elizors of a borough or manor. (Rex v. Hawkins, 5 T. R. 376, note.)

Whether a supposed office has any legal existence or not in the particular case, yet if it be an office known to the law generally, (as clerk of the peace, &c.,) and a person usurps it, a quo warranto lies. (Per Littledale, J., in

Reg. v. Thomas, 8 Ad. & Ell. 188.) So, quo warranto lies for setting up a new office touching the administration of justice, or public rule and government, as bailiff of a ville; (Rex v. Boyles, 2 Stra. 836;) where the court said—"Suppose a man should set up to preside at Islington as a public [\*162] officer, and have *insignia* carried before him, is he not to be \*punished for this, and have you any other way to come at him but by such an information?"

An information in the nature of a quo warranto will be granted against a person unlawfully claiming to be and exercising the office of Master of the Fellowship of the Patten Makers' Company of the city of London, (Rex v. Bumstead, 2 B. & Adol. 699;) Master of the Merchant Tailors' Company in London, (Rex v. Attwood, 4 B. & Adol. 481; 1 Nev. & M. 286;) Master of the Company of Coopers in London, (6 Went. Prec. 63;) or to be a member of the Company of Tailors in Lichfield, (Rex v. Wakelin, 1 B. & Adol. 50;) for such offices are connected with political franchises.

In Rex v. Regnell, (2 Stra. 1161,) the Court held, that an information in the nature of a quo warranto would lie for claiming an exclusive ferry over the river Thames from Laleham, but discharged the rule because it only appeared the defendant took money of passengers, which is not setting up an exclusive right. There are many other instances in which a quo warranto information will lie for the usurpation of *franchises* of a public nature, as fairs, markets, &c. (Comyn's Dig. tit. Quo Warranto (A), ante, 111; Buller's N. P. 208.) But in several of them, and indeed in some of those above enumerated, it seems that the information can be exhibited only by and in the name of the attorney-general ex officio. (Rex v. Marsden, 3 Burr. 1817.) Others do not fall within the stat. 9 Ann. c. 20, and in such cases no costs are recoverable against the defendant.

II. *In what Cases refused.*—An application for leave to file an information in the nature of a quo warranto will not be granted where the information ought to be filed (if at all) by and in the name of the attorney-general ex officio. Thus, it will not be granted against a corporation as a body, to shew by what authority they claim to act as a corporation. (Rex v. The Corporation of Carmarthen, 2 Burr. 869; 1 W. Blac. 187, S. C.) Nor even against certain specified individuals for claiming to act as a corporation, [\*163] (Rex v. Ogden, 10 B. & C. 230.) Nor can the charter of a corporation be indirectly attacked through the medium of a quo warranto information against one of its officers, at the instance of a private relator. (The Queen v. Taylor, 11 Ad. & Ell. 949; 3 Per. & D. 652, S. C.) But if the application against a member of a corporation be founded upon grounds affecting *his individual title*, it is no answer that the same objection applies to the title of every member of the corporation, (Rex v. White, 5 Ad. & Ell. 613; 1 Nev. & P. 84, S. C.; Rex v. Parry, 6 Ad. & Ell. 810; 2 N. & P. 414, S. C.) although such a circumstance may influence the court in the exercise of its discretion, and coupled with other facts, may induce them to refuse the application. (Ante, 125.) Where a corporation was dissolved, and no corporate body existed in fact at the time, the court refused to grant an information in the nature of a quo warranto against an individual, for an impertinent claim to be returning officer at an election of members to serve in parliament, by virtue of his having been

elected an alderman while the corporation existed in fact; there being no civil right in controversy, but it being rather the ground of a proceeding in *pœnam* by the attorney-general. (*Rex v. Saunders*, 3 East, 119.)

The court will not grant a quo warranto information to try the validity of an election to the office of churchwarden; for that is not an usurpation on the rights or prerogatives of the crown, for which only the old writ of quo warranto lay; and an information in the nature of a quo warranto can only be granted in such cases. (*Rex v. Shepherd*, 4 T. R. 381.) "It has been expressly decided over and over again, that a quo warranto information does not lie against overseers." (Per Patteson, J., in *Rex v. Carpenter*, 1 Nev. & P. 774; *Rex v. Daubney*, 1 Bott's Poor Law, pl. 384; 2 Stra. 1196.) So it will not lie against a person for usurping the office of governor and director of the poor, elected annually by rated inhabitants, under a local act for the government of the poor and maintenance of the nightly watch, with extensive powers. (*Rex v. Ramsden*, \*3 Ad. & Ell. 456; 5 Nev. & M. 325, S. C.: per Littledale and Patteson, [\*164] Js.: *dubitante* Lord Denman, C. J.); nor against a person claiming to be the trustee of a parish for various local purposes, (*Rex v. Hanley*, 3 Ad. & Ell. 463, per Lord Tenterden, C. J., Taunton, and Patteson, Js.: *dissonniente* Parke, J.); nor against a person for exercising the office of guardian of the poor for an union under the Poor Law amendment Act, 4 & 5 Will. 4, c. 76. (In the matter of the Ashton Union, 6 Ad. & Ell. 784; *Rex v. Carpenter*, 1 N. & P. 773.) In H. T. 1816, an information in the nature of a quo warranto was granted against a person claiming to act as guardian of the poor in Exeter, under stat. 28 Geo. 3, c. 76; and that decision was recognized and acted on in *Rex v. Beedle*, (3 Ad. & Ell. 476;) but the contrary has since been decided in the cases above mentioned. In *Rex v. Carpenter*, (1 Nev. & P. 774,) Lord Denman, C. J., said—"The decision in *Rex v. Beedle* proceeded on the statement of that Exeter case by Mr. Dealtry, but the question was fully argued afterwards in *Rex v. Ramsden*, and the court was there of opinion that they could not grant an information for such an office; and per Cur., 'we do not feel ourselves at liberty to depart from the authority of *Rex v. Ramsden*.'" So an information in the nature of a quo warranto will not be granted against the sexton of a parish, for it does not concern the administration of justice nor any political right, and there is another remedy, viz. by an action for the fees, (*Rex v. The Ministers and Churchwardens of Stoke Damerel*, 5 Ad. & Ell. 584; 1 N. & P. 56, S. C.): nor against the steward of a court baron, that being only a private right and no court of record, (*Rex v. Hulston*, 1 Stra. 621:) nor against the registrar of the corporation of the Bedford Level, he being a mere servant of the corporation, and his office not affecting any franchise or authority holden under the crown, (*Rex v. The Corporation of the Bedford Level*, 2 Smith's R. 535; 6 East, 356; Id. 367:) nor against the clerk of the commissioners of land-tax, (*Rex v. Thatcher*, 1 Dowl. & Ry. 426:) nor against a county treasurer who has been de facto elected \*by the justices in quarter sessions, (*Rex v. The Justices of Herefordshire*, 1 Chit. R. 709:) nor against a fellow of a college in [\*165] Cambridge, (*Rex v. Gregory*, 4 T. R. 240, note:) not for setting up a rabbit-warren, (*Ibbotson's case*, Cases tempe Hardwicke, 261: *Rex v. Lowther*, 1 Stra. 637; 2 Ld. Ray. 1409:) nor in the case of various other

private franchises for which the old writ of quo warranto lay. (See Comyn's Dig. tit. Quo warranto (A), ante, 111.) "There is no instance of a quo warranto having been granted by leave of the court against persons for usurping a franchise of a mere private nature not connected with public government." (Per Bayley, J., in *Rex v. Ogden*, 10 B. & C. 233.) But a quo warranto information will be granted against a person unlawfully claiming to be Master of the Fellowship of the Patten Makers' Company of the City of London, (*Rex v. Bumstead*, 2 B. & Adol. 699;) or Master of the Merchant Tailors' Company in London, (*Rex v. Attwood*, 4 B. & Adol. 481;) or Master of the Company of Coopers in London, (6 Went. Prec. 63;) or to be a member of the Company of Tailors in Lichfield, *Rex v. Wakelin*, 1 B. & Adol. 50;) for such offices are not altogether unconnected with public government and political rights, although perhaps not falling within the 9 Ann. c. 20.

It is always in the *discretion of the court* to grant or withhold an information in the nature of a quo warranto, and they are bound to exercise a sound discretion upon consideration of the particular circumstances in each case. In *Rex v. Wardroper*, (4 Burr. 1964,) Lord Mansfield, C. J., said—"The stat. of 9 Ann. c. 20 had a view to the speedy justice to be done against usurpers of offices in corporations as well as to quiet the possession of those who had right; and that act does not leave it to the discretion of the officer, as it was before, but puts it in the discretion of the court; therefore the court must exercise a discretion. It would be very grievous if the information should go of course; and it would be a breach of trust in the court to grant it as of course. On the contrary, the court are to *exercise a sound discretion upon the particular circumstances of every case.*"

[\*166] In *Rex v. Dawes*, (4 Burr. 2022,) the court unanimously concurred in opinion that it was contrary to the true spirit and meaning of the stat. 9 Ann. c. 20, to grant informations almost of course as had been the practice till of late years. They held that the true intent of the legislature in making this statute was, that the court should exercise a sound discretion according to the particular circumstances of the respective cases in which applications were made to them for granting such informations; and that it was by no means meant that they should be granted of course. In *Rex v. Sargent*, (5 T. R. 467,) Lord Kenyon, C. J., said—"When Lord Mansfield first came into this court, he found that informations in nature of quo warranto were had almost for asking; but he soon saw the impolicy and vexation of such a rule, and therefore, before he granted any such application, he canvassed the case, and unless he found strong grounds for questioning the defendant's title, he (and the court sitting with him) always refused to let the information go. Such is the conduct which I am inclined to pursue, and therefore I shall consider all the circumstances of this case." And after going through the affidavits and commenting upon the facts, his lordship thus concluded—"Therefore upon the sound exercise of the court's discretionary power I see no reason for sending this to a trial." In various subsequent cases the court has acted upon the principle that it possesses a discretionary power, and upon that ground has refused a rule *even where a valid objection to the defendant's title has been shewn*. Thus where the assessors who acted with the mayor of a borough in revising the burgess lists were objected to as having been assessors of the borough

and not for the mayor's ward, and no satisfactory answer was given to such objection, the court refused a rule for an information on the grounds that no fraud was imputed, that no mischief appeared to have been done, that the prosecution if successful would probably dissolve the corporation, and that the prosecutors appeared \*to have that intention. (Rex v. Parry, 6 Ad. & Ell. 810; 2 Nev. & P. [\*167] 414, S. C.) And under circumstances tending to throw suspicion on the motives of the relator, the court will not grant such application where the consequence will be to dissolve a corporation. (Rex v. Trevenen, 2 B. & A. 479; Rex v. Bond, 2 T. R. 767; but see Rex v. Wakelin, 1 B. & Adol. 50.) The court refused a quo warranto information against the steward of a borough for acting as a capital burgess, where there appeared to be an usage of one hundred years standing that the same person might fill both offices. (Rex v. Trelawney, 3 Burr. 1615.) So they refused a quo warranto information for holding a court-leet which had been so held time out of mind. (Rex v. Medlicot, 2 Barnard. 221.) So the court refused an information in the nature of a quo warranto against the Vice-Chancellor of the University of Cambridge for granting alehouse licenses and taking bonds with sureties from the persons licensed, and certain fees payable thereon, because it appeared that the origin of the franchise was too remote to be traced to a legal origin, and that it had been partially recognized by ancient statutes and acted upon for centuries, although the course of proceeding had not been in all respects uniform; and Littledale, J., in delivering the judgment of the court, said—"By refusing this rule we do not prevent the parties from raising the question if they shall be so advised, nor prejudice its determination; we decline only to render any assistance in originating the proceeding which may imply a suspicion in our minds that what has existed unquestioned for centuries is referable only to usurpation on the crown." (Reg. v. Archdall, 8 Ad. & Ell. 281. 289; 3 N. & P. 696, S. C.) So the court refused a rule for a quo warranto information against the town-clerk of a borough, which was moved for in order to contest his right to compensation as a displaced officer under the 5 & 6 Will. 4, c. 76, s. 66, (Rex v. Harris, 7 Ad. & Ell. 475; 1 Nev. & P. 576;) so against the coroner of a borough, where the object was to attack the charter of the corporation. \*(Reg. v. Taylor, 11 Ad. & Ell. 949; 3 Per. & D. 652, S. C.) It is in exercise of the court's [\*168] discretionary power that they refuse informations in the nature of quo warranto at the instance of persons who have disqualified themselves to become relators. (See post, Ch. IV. s. 72; 2 Selwyn's N. P. 1172, 9th ed.)

For instances in which the court will refuse an application for an information in the nature of quo warranto upon technical grounds of objection independent of the substantial merits, see post, Ch. IV. s. 4.

[\*169]

## \*CHAPTER IV.

OF THE APPLICATION FOR LEAVE TO FILE AN INFORMATION IN THE NATURE OF QUO WARRANTO:—1. WITHIN WHAT TIME IT MUST BE MADE. 2. BY WHOM IT MAY BE MADE, AND IN WHAT CASES THE RELATOR IS DISQUALIFIED. 3. THE NECESSARY AFFIDAVITS IN SUPPORT OF THE APPLICATION. 4. HOW THE MOTION IS MADE, AND CAUSE SHEWN AGAINST IT; AND HEREIN OF THE OBJECTIONS AND ANSWERS WHICH MAY BE MADE BY THE DEFENDANT—RULE DISCHARGED OR MADE ABSOLUTE—COSTS.

1. *Within what Time the Application must be made.*—By stat. 7 Will. 4 & 1 Vict. c. 78, s. 23, it is enacted, “that after the passing of this act [17th July, 1837] every application to the Court of King’s Bench for the purpose of calling upon any person to shew by what warrant he claims to exercise the office of mayor, alderman, councillor, or burgess in any borough shall be made before the end of *twelve calendar months* after the election, or the time when the person against whom such application shall be directed shall have become disqualified, and not at any subsequent time.”

It seems doubtful whether the above section extends to applications against freemen. (See *Reg. v. Pepper*, 7 Ad. & Ell. 745; 3 N. & P. 155.)

Since the above act it has been decided, that, as the title of a burgess is an annual one, and may be objected to before the court of revision of the borough, the Court of Queen’s Bench will not grant a quo warranto information against him unless the application be made in Michaelmas Term, or immediately after the defendant has been enrolled and has acted as a bur-

gess, or unless the delay be satisfactorily \*accounted for; and therefore, where the defendant was enrolled in October, and acted and voted as a burgess on the 1st of November, and the application for the rule nisi was made towards the end of the following Hilary Term, the court afterwards discharged the rule on the ground that the application was too late. (*Reg. v. Hodson*, T. T. 1842, 20 Law J., Q. B., 219; and see *Reg. v. Anderson*, 2 Gale & D. 113.) It is to be observed, that the mayor, auditors, and assessors are all *annual* officers.

The election of councillors usually takes places on the 1st of November. It seems that in such case an application for a rule nisi on the first day of Michaelmas Term (2nd November) in the following year would be too late; and therefore the application must be made before the end of Trinity Term, (less than eight months.) But where an election of councillors takes place on the 2nd of November, (which sometimes happens, see 5 & 6 Will. 4, c. 76, s. 30; 1 Vict. c. 78, s. 25,) it seems that an application made on the first day of Michaelmas Term in the following year would be in time. (*Hardy v. Ryle*, 9 B. & C. 603; 4 Nev. & M. 295, S. C.; *Williams v. Burgess*, 12 Ad. & Ell. 635; 4 Per. & D. 443; 9 Dowl. 544, S. C.; *Ackland v. Lutley*, 9 Ad. & Ell. 879; 1 Per. & D. 636, S. C.) Under the previous act of 32 Geo. 3, c. s. 1, it was necessary not only that the rule nisi should be moved for, but also made absolute, and the information actually filed before the expiration of the six years thereby limited. (*Rex*

*v. Stokes*, 2 M. & S. 71; *Reg. v. Harris*, 11 Ad. & Ell. 518; 3 Per. & D. 266; 8 Dowl. 499, S. C.) But the language of the present act is different in that respect; and it seems sufficient that the application be made, that is to say, *if the rule nisi be applied for*, at any time within the twelve calendar months thereby allowed.

By 32 Geo. 3, c. 58, s. 1, informations in the nature of quo warranto for the exercise of any office or franchise in any city, borough, or town corporate, must be exhibited within *six years* from the time when the defendant first actually took upon himself or held and executed the office \*or franchise which is the subject of the information, such six years to be [\*171] reckoned and computed from the day on which the defendant was actually admitted and sworn into such office or franchise. This statute is confined to *corporate* offices and franchises, (see ante, 129;) but the court in the exercise of their discretion will not in any other case permit an information in the nature of a quo warranto to be exhibited at the instance of a relator after the defendant had been in actual possession and user of the office or franchise for more than six years. Thus, in the case of a free miner of the Forest of Dean. (*Reg. v. Harris*, 11 Ad. & Ell. 518; 3 Per. & D. 266; 8 Dowl. 499, S. C.) And if the six years expire after the rule nisi is obtained, but before it is made absolute, the rule will be discharged. (*Rex v. Stokes*, 2 M. & S. 71; *Reg. v. Harris*, supra.) Where a party had been sworn into and had exercised a corporate office for more than six years, but the objection to his title was that he had not been sworn in *before the proper officer*, the court, in the exercise of their discretion, and without deciding whether he was protected by 32 Geo. 3, c. 58, refused to grant a quo warranto information against him. (*Rex v. Brooks*, 8 B. & C. 321; 2 Man. & Ry. 389.) Indeed before the passing of that statute the court had "resolved in future to limit their own discretion in granting applications of this nature to six years; beyond which time they would not under any circumstances suffer a party who had been so long in possession of his franchise to be disturbed." (*Reg. Gen.*, E. T. 31 Geo. 3, 4 T. R. 284; *Rex v. Dicken*, 4 T. R. 282.) Nor would the court grant a quo warranto information to impeach a derivative title, if the person claiming the original title had been in the undisturbed possession of his office six years. (*Rex v. Peacock*, 4 T. R. 684.) The stat. 32 Geo. 3, c. 58, s. 3, enacted to the same effect. But it has been held that the statute does not extend to cases wherein the title to one office is a qualification to hold another office; and therefore, although the party had exercised the first for six years, the court made the rule absolute for an information for exercising the second \*office upon a defect of title to the first. (*Rex v. Stokes*, 2 M. & S. 71.) [\*172]

A person usurping a public office or franchise is liable to be fined, and therefore the court will make absolute a rule for a quo warranto information, although the defendant has since the rule nisi was obtained resigned his office, and his resignation has been accepted. (*Rex v. Warlow*, 2 M. & S. 75.) But as a quo warranto information is now considered as a civil remedy to try the party's right to the office, and as the fine is merely nominal, it seems that in such a case the rule should be discharged upon payment of the relator's costs and a nominal fine to the Crown. In one case the court granted a quo warranto information for holding an annual office after its

close, in order to try a civil right. (*Rex v. New Radnor*, 2 Lord Ken. 498.) But generally speaking if a party has been permitted to exercise an office for the whole period for which he was appointed, without his right or title being questioned, the court will not allow a quo warranto information to be filed at the instance of a private relator after the defendant has ceased to be in the possession and enjoyment of the office. (*Rex v. Harris*, 7 Ad. & Ell. 475; 1 N. & P. 576.)

There does not appear to be any objection to the motion for the rule nisi being made on the last day of term. (1 Gude, 158; *Reg. v. Hodgson*, 20 Law J., Q. B., 219.) But it is otherwise on application for criminal informations.

2. *By whom the Application may be made.*—An application for an information in the nature of a quo warranto will be granted only at the instance of a *competent relator*, i. e. one having a sufficient interest to warrant his interference, and not having done any act rendering him disqualified to act as relator. There may however be two or more relators, and it seems that the information will be granted at the instance of any one of them who is duly qualified, although the others are incompetent *Rex v. Symmons*, 4 T. R. 223; *Rex v. Blame*, 4 Ad. & Ell. 664; *Rex v. Parry*, 6 Ad. & Ell. 810; 2 N. & P. 414.) The proposed relator or relators [\*173] must swear that the motion is made at his or their instance as relator or relators. (*Reg. Gen. M. T.* 3 Vict. ; 11 Ad. & Ell. 2; 3 Per. & D. 1; post, 181.) No person should become a relator who is likely to be wanted at the trial as a necessary and material witness in support of the prosecution, for the relator being personally liable to the defendant for his costs, is interested in the result of the proceedings, and so disqualified as a witness.

A mere stranger to a corporation cannot in general be permitted to file a quo warranto information to impeach the title of a corporator, (*Rex v. Kemp*, 1 East, 46, note; *Rex v. St. John*, 2 Selw. N. P. 1172, note (n), 9th ed.,) unless he can shew that as an inhabitant of the borough he is subject to the local jurisdiction of the body corporate. (*Rex v. Hodge*, 2 B. & A. 344, note.) But where the objection to the title of the defendants as councillors was that they had not received the sacrament within twelve months previous to their election under 13 Car. 2, stat. 2, s. 1, the court overruled the objection raised by them, that it did not appear that the party making the application had any connection with the corporation; and Ashhurst, J., said, "Where the application is made merely to disturb the local peace of corporations, it is right to inquire into the motives of the party, to see how far he is connected with the corporation. But the ground on which this application is made is to enforce a general act of Parliament which interests all the corporations in the kingdom, and therefore it is no objection that the party applying is not a member of the corporation. Another reason why we may more safely interfere in this case is, because the application does not tend to a dissolution of the corporation." (*Rex v. Brown*, 3 T. R. 574, note.) An inhabitant of a borough, who is subject and liable to be affected by the borough rates, is clearly a competent relator without being a burgess. (*Rex v. Parry*, 6 Ad. & Ell. 810; 2 Nev. & P. 414; *Reg. v. Quayle*, 11 Ad. & Ell. 508.) A burgess or other member of the corporation is a good relator, though the affidavits disclose matter tending to dissolve the corporation.



(*Rex v. White*, 5 Ad. \* & Ell. 613; 1 Nev. & P. 84; *Reg. v. Parry*, supra.) Any burgess is a competent relator against a person exercising the office of town-clerk, though the right of electing to that office to be in a select body. (*Rex v. Davies*, 1 Man. & Ry. 538.) Where the relator was a burgess and freeman, but it appeared also that he was a man in low and indigent circumstances, and there were strong grounds of suspicion that he was applying, not on his own account or at his own expense, but in collusion with a stranger who had used threats that unless the defendant came over to his party he would dissolve the corporation, &c., and it appeared likely that the proceedings would have that effect, the court abstained from making the rule absolute. (*Rex v. Trevenen*, 2 B. & A. 339; *Rex v. Bond*, 2 T. R. 767.) But it has since been held, that it is no objection that the person applying is in low and indigent circumstances, and that there is a strong ground of suspicion that he is applying, not on his own account or at his own expense, but in collusion with a stranger. The court however, in a case of this kind required security for costs. (*Rex v. Wakelin*, 1 B. & Adol. 50.) The court will not stay proceedings in a quo warranto information, until the prosecutor give security for costs, on the ground that the relator is in insolvent circumstances, where it appears that he is a corporator and no fraud is suggested. (*Rex v. Wynne*, 2 M. & S. 346.) But it is otherwise where the relators do not act *bonâ fide*. (*Reg. v. Dudley*, 7 Dowl. 700.)

*Relator, when disqualified.*—A burgess or other person having sufficient interest to be relator in a quo warranto information, may nevertheless have so acted as to render himself disqualified to become such relator, and on that ground the court will refuse an application *at his instance*, although a valid objection to the defendant's title be shown. Thus, where a rule nisi was obtained for a quo warranto information against the mayor of Cambridge, and the objection to his election was that he was proposed and elected on the same day, contrary to a bye-law which required that the mayor should be elected on a day subsequent to that on which he was proposed. In answer it was shown that the \*relator was party to an agreement made by the corporation not to enforce that bye-law, and that if the franchise [\*175] of any person should be impeached in consequence of it, he should be defended at the public expense. The court thereupon discharged the rule with costs. (*Rex v. Mortlock*, 3 T. R. 300.) So, a quo warranto information will not be granted to call in question the validity of an election at the instance of any person who was present at, and concurred in such election, or in any prior or subsequent election liable to precisely the same objection, provided he then knew or had the means of knowing of the defect or irregularity relied on. In *Rex v. Stacey*, (1 T. R. 1,) the original applicants were present at and acquiesced in the defendant's election, and their motion was refused. A second application was made at the instance and expense of the former applicants, and the court discharged the rule. In *Rex v. Symmons*, (4 T. R. 223,) two of the four persons joining in the application were held disqualified, they having been present and concurred in the defendant's election; the third had voted in the succeeding year, when the mode of election was in all respects precisely similar to that at which the defendant was chosen. The court therefore granted an information only at the instance of the fourth applicant, who was in no respect disqualified. In *Rex v. Slythe*, (6

B. & C. 240,) it was held that corporators who had attended and voted at a public meeting for the election of officers were not competent relators to question the authority of the presiding officers on that occasion, unless they showed that they were not aware of the objection at the time of the meeting. And per Abbott, C. J., "It has been generally considered a rule of corporation law, that a person is not to be permitted to impeach a title conferred by an election in which he has concurred, or the titles of those mediately or immediately derived from that election." It is a valid objection to a relator applying for a quo warranto information, that he was present and concurred at the time of the objectionable election, even although he was then ignorant of the objection; for a corporator must be taken to be cognizant of the contents of his own charter, \*and of the law arising therefrom. (Rex v. [176] Trevenen, 2 B. & A. 339.) There it appeared by the affidavit of one of the relators that he had concurred in the election of Grylls, from whom the defendant derived his title, and the court held that he was disqualified to act as relator. In Rex v. Parkyn, (2 B. & Adol. 690,) it was held a valid objection to a relator applying for a quo warranto information for usurping the office of burgess, that he was formerly present at and concurred in the election of another burgess when the objection he sought by the application to avail himself of was taken and overruled, and he voted for the party then elected, for by so doing he acquiesced and concurred in the overruling of the objection. But it has since been decided that a party is not disqualified from being relator in a quo warranto information against a defendant for filling the office of town councillor by having withdrawn an objection to the defendant's name remaining on the burgess list, after the court of revision had overruled the same objection in another case. (Rex v. Huxham, 4 Jurist, 1133.) And it seems that if a person does not know, or have the means of knowing of an objection to an election at the time of such election, he will not be deemed to have concurred in it, so as to preclude him from being afterwards the relator in a quo warranto information. (Rex v. Smith, 3 T. R. 573; Rex v. Morris, 3 East, 213, recognized in Rex v. Trevenon, 2 B. & A. 339; where the court said, "In Rex v. Morris, the relators were not aware of the fact at the time of the election, which makes all the difference.") So, in Rex v. Benney, (2 B. & Adol. 684,) the relators were held not disqualified by the mere circumstance of having formerly taken part in other elections, when the same irregularity existed but was *not noticed*. But it should be remembered that every corporator must be presumed to be cognizant of that which has recently taken place in the corporation of which he is a member, unless he shows the contrary. (Rex v. Slythe, 6 B. & C. 243—per Abbott, C. J.) And he must be taken to be cognizant of the contents of his own charter, and of the law arising therefrom. (Rex v. Trevenen, 2 B. & A. 339.) An active partizan \*and agent of a defeated [177] candidate, who is present at an election of councillors for a particular ward, and is fully aware of an irregularity in the mode of election which then takes place, and yet makes no objection (he not being a burgess of *that* ward,) may nevertheless be a competent relator. (Reg. v. Rowley, 20 Law J., Q. B., 198.) It is no objection to an information in nature of a quo warranto against a mayor, for not having taken the sacrament within the proper time before his election, that the relator concurred in his election, because the

defect is a latent one arising from the omission of an act positively required by the legislature. (*Rex v. Smith*, 3 T. R. 578.)

The court will not permit a corporator to file an information in the nature of quo warranto against another, for a defect of title which equally applies to his own or those under whom he claims; (*Rex v. Cudlipp*, 6 T. R. 503; *Rex v. Bracken*, 1 Alcock & Napier, 113;) for he must be taken to have recognized the validity of his own election, and therefore cannot be permitted to call in question another standing on precisely the same footing.

Generally speaking, a *subsequent* recognition of an election will not preclude a person from questioning its validity, as the relator in a quo warranto information. Thus, it is no objection to relators applying for a quo warranto information against the defendant for exercising the office of an alderman (his election to which they had opposed,) that they afterwards made no opposition to his election to the principal office of magistracy, to which the other was a necessary qualification, or that they afterwards attended at and concurred in corporate meetings, whereat he presided, or when he attended in his official character, such application being made within the time limited by law. (*Rex v. Clarke*, 1 East, 38; and see *Rex v. Morris*, and *Rex v. Stewart*, 3 East, 213.) On a motion for a quo warranto information against a capital burgess, on the ground of irregularity in his election, it is no answer that the relator frequently acted with the party against whom he applies on corporation business during the two years following "such party's" [\*178] election, the relator not being shown to have concurred in that election. (*Rex v. Benney*, 2 B. & Adol. 684.) There Littledale, J., said, "If the relator's title had been subject to the same defect as the defendant's, as in *Rex v. Cudlipp*, (6 T. R. 503,) or, if he had concurred in defendant's election, as in *Rex v. Trevenen*, (2 B. & A. 339,) there might have been good ground of opposition to this rule; but his subsequent acquiescence and acting with the defendant is clearly no objection." (*Rex v. Clarke*, 1 East, 38.) And per Taunton, J., "There (in *Rex v. Clarke*) the relator was distinctly shown to have been cognizant of the defendant's want of title when he acted with him; and yet he was held not to be disqualified." The principle which governs these cases is the acquiescence of the relator in the objectionable election *at the time*." (Per Cur. in *Rex v. Trevenen*, 2 B. & A. 339.) But where the relator, as the legal adviser of the defendant, had repeatedly advised him that he had been duly elected as alderman, the court discharged a rule, obtained at his instance, to call in question the defendant's title of alderman. (*Rex v. Payne*, Esq., 2 Chit. R. 367.) And where the relator had, as a councillor of the borough, permitted the defendant, without objection or protest, to make before him the declaration required by sect. 50 of the stat. 5 & 6 Will. 4, c. 76, the court discharged a rule nisi for a quo warranto information, on the ground that the relator had by his conduct induced the defendant to change his position and to take upon himself the office to which he had been elected. (*Reg. v. Greene*, 2 Gale & Dav. 24.)

3. *Affidavits in support of the Application.*—It is most important that the affidavits made in support of an application for an information in the nature of a quo warranto, should be complete and sufficient in every respect in the first instance. For if the affidavit omit to state some material fact, the court will not give leave to amend it. *Rex v. Barzey*, 4 M. & S. 253;

but see *Rex v. Wright*, 2 Chit. R. 162; *Rex v. Williamson*, 3 B. & A. 582.) It is now \*clearly settled that where a party, through his [\*179] own neglect, makes an application to the court on insufficient materials, and his rule is on that ground *discharged*, he cannot afterwards be allowed to supply the deficiency and renew his application. (*Reg. v. The Inhabitants of Barton*, 9 Dowl. 1021; *Saunderson v. Westley*, 8 Dowl. 652; *Reg. v. Harland* 8 Dowl. 323; *Ex parte Hasleham*, 1 Dowl. N. S. 792; *Reg. v. The Manchester and Leeds Railway Company*, 8 Ad. & Ell. 413; 1 Per. & D. 164, S. C.; *Rex v. Orde*, 8 Ad. & Ell. 420, note; *Reg. v. Pickles*, 21 Law J., Q. B., 40.) "The rule is express that a party, who has a full opportunity of bringing his case before the court, must do so in the first instance. If he neglect the means of doing so, he cannot be allowed to come again and put the other party to the trouble and expense of a second attendance." (*Per Curiam in Reg. v. The inhabitants of Barton*, supra.) The only exception to such rule seems to be where the previous affidavits were defective merely in their title. (*Reg. v. Jones*, 8 Dowl. 307;) or perhaps in the jurat. *Shaw v. Perkin*, 1 Dowl. N. S. 306; but see *Rex v. Cockshaw*, 2 N. & M. 378.) Where the affidavits made in support of an application for a quo warranto information have been satisfactorily answered and the rule discharged on cause shown, a second application at the instance of the same relator, and founded on the same alleged defect, will not be entertained, although the renewed application be made upon affidavits explaining and contradicting those upon which the former rule was discharged. (*Rex v. Orde*, 8 Ad. & Ell. 420, note (a)). In that case Lord Tenterden, C. J., said, "That the objection to the mayor's title was a capitious one, and that to allow it to be raised on a second application would be to encourage parties to come before the court in the first instance with an imperfect case, and then eke it out on a second application by picking out inconsistencies in the opposing affidavits." (And see *Rex v. Smithson*, 4 B. & Adol. 861; 1 N. & M. 775, S. C.; *Rosset v. Hartley*, 7 Ad. Ell. 522, note.) Even where the previous application has been defeated by gross [\*180] perjury, the circumstance must be very \*special to induce the court to permit a renewed application. (*Rex v. Eve*, 5 Ad. & Ell. 780; 1 N. & P. 229, S. C.) But although the *same relator* cannot make a fresh application, it seems clear that another qualified person may do so. (*Rex v. Slythe*, 6 B. & C. 244; *Rex v. Bond*, 2 T. R. 767.) It is no objection to an application for a quo warranto information that a similar rule has been obtained and discharged upon an affidavit made by the same deponent, it not appearing whether such rule was discharged upon the merits or by consent, or who was the then prosecutor. (*Rex v. Aldermen of New Radnor*, 2 Ld. Ken. 498.)

Sometimes a material defect in the relator's affidavits may be supplied by those filed by the defendant, but this can only occur where the rule has been enlarged, or where the defendant has made use of his affidavit before taking the objection. (*Rex v. Mein*, 3 T. R. 596.) There the relator's affidavit omitted to state in whom the right of election to the office of portreeve was, but the defendant's affidavit, filed when the rule was enlarged, supplied the defect, and Lord Kenyon C. J. said, "If the matter had rested on the relator's affidavit alone, I should have been clearly of opinion that the information could not go, but upon conference with my brothers, I find

that it is not unusual to have recourse to the affidavit against the rule, in order to come (if possible) at the whole truth of the transaction, And I agree that in so doing we must not garble any sentence referred to, so as to give it a different meaning from that which it naturally imports when taken altogether: but still we are not bound to take the whole of it to be true, but merely refer to it as evidence of certain facts." (Id. 598.) In a recent case it was decided that upon motion for a *criminal information* the prosecutor cannot use a statement in the defendant's affidavits to supply a defect in his own, where the latter are so imperfect that the court, if aware of their defectiveness, would not have granted a rule nisi. (Reg. v. Baldwin, 8 Ad. & Ell. 168; 3 N. & P. 342. S. C.) Possibly there may be some difference in this respect between an application for a criminal information \*and an application for an information in the nature of a quo warranto, the latter being considered as a civil remedy. But it is clear [\*181] that upon a motion of the latter description, the prosecutor cannot rely on any point arising out of facts not stated in his affidavits made in support of the application, especially if such point be not stated in the rule nisi. (Reg. v. Thomas, 8 Ad. & Ell. 183; 3 N. & P. 288, S. C.)

The affidavits should be entitled "In the Queen's Bench," (without more,) (1 Gude, 158; Rex v. Jones, 1 Stra. 704; Rex v. Cole, 6 T. R. 640;) and it is no objection to them that some of the deponents are estopped from being relators in the proposed information, provided the motion be made at the instance of a relator properly qualified, and it matters not that the complete ground of the application appears only from the affidavit of the party estopped. (Rex v. Blame, 4 Ad. & Ell. 664; Rex v. Parry, 6 Ad. & Ell. 810; 2 N. & P. 414; Rex v. Symmons, 4 T. R. 223.)

By Reg. Gen. M. T. 3 Vict., "It is ordered, that no rule be hereafter granted for filing any information in the nature of a quo warranto, unless at the time of moving an affidavit be produced, by which some person or persons shall depose upon oath that such motion is made at his or their instance as relator or relators; and that such person or persons shall be deemed to be the relator or relators in case such rule shall be made absolute, and shall be named as such relator or relators in such information in case the same shall be filed, unless the court shall otherwise order." (11 Ad. & Ell. 2; 3 Per. & D. 1.)

Under the above rule it is sufficient if one of the deponents who is properly qualified to be the relator, (see ante, 173,) state in his affidavit *that the motion is made at his instance as relator*, without going on to say that he shall be deemed to be the relator or be named as such in the information; for that is merely what the rule directs, and is not required to be deposed to in the affidavit. But an affidavit stating, that it is the *intention of the deponent to be and to become* really and bonâ fide the relator in case the \*court should order the information to be exhibited, is not a [\*182] compliance with the rule. (Reg. v. Hedges, 11 Ad. & Ell. 163; 9 Dowl. 493.) It is, however, sufficient if the proposed relator swears that he has directed the application for the rule, and that the motion *will* be made at his instance as relator. (Reg. v. Anderson, 2 Gale & D. 113.)

The affidavits should state fully all the material facts, for if any of them are *improperly suppressed*, the rule will be discharged. (Rex v. Hughes, 7 B. & C. 719; 1 Man. & Ry. 625, S. C.) And they should clearly shew the mode of election to the office in question, (per Cur. in Rex v. Mein, 3

T. R. 596;) and the grounds of objection intended to be relied on. They must expressly pledge the deponent's belief, at least, to the facts upon which such objections are founded. Upon an application for a quo warranto information suggesting that the defendants were elected contrary to the provisions of a particular charter, the affidavit must state that the charter was accepted, or that the usage has been in conformity to the charter, and the court, after determining that the affidavit was ill for omitting so to state, refused leave to amend it. (Rex v. Barzey, 4 M. & S. 253.) As to what amounts to an acceptance of a charter, see Rex v. Hughes, 7 B. & C. 708. Affidavits in support of an application for a quo warranto information should state any usage there may be which differs from what might be held to be the construction of the charter of incorporation of the borough. (Rex v. Headley, 7 B. & C. 496; 1 Man. & Ry. 845.) If the application be founded on a custom to elect in a particular manner, the deponents must expressly state that they believe such custom to be immemorial; and it is not sufficient to state facts from which such a conclusion may be fairly drawn, as that the custom has been followed for fifty years and as long back as the deponents can recollect. (Rex v. Lane, 5 B. & Ad. 488.) To entitle a party to an information in the nature of a quo warranto on the ground that the person filling the office has not been elected by a majority of the class entitled to vote, the relator must by affidavit shew who the class are [\*183] \*that are entitled to vote, and that another person had the majority of such votes. Thus where a charter of Edw. 4, granted to the tenants and *inhabitants* of the manor of H., (which was of ancient demesne, that the justices of the peace for the manor should be chosen by the said tenants and inhabitants:—Held that a relator who claimed to be elected by a majority of the inhabitants “without giving any construction to the word “inhabitant,”) had not made out a *prima facie* case. (Rex v. Mashiter, 6 Ad. & Ell. 153; 1 Nev. & P. 314; and see Rex v. Sandford (Governors,) 1 Nev. & P. 328.) So, where a quo warranto information was moved for against an officer elected by ballot, on the ground that a large proportion of the persons who voted were not qualified, but it was not shown *for whom* the votes of those persons were given:—Held, that on this application the officer could not be required to prove his election valid; but it lay on the opposing parties to shew (if that were practicable) that his majority was obtained by bad votes. (Rex v. Jefferson, 5 B. & Adol. 855.) On a rule nisi for an information in the nature of a quo warranto, the relator is bound by *the day* on which in his affidavit (though founded on information and belief) the election is alleged to have taken place, and if that day is mistaken, the defendant is not bound to show a regular election on another day. (Rex v. Rolfe, 4 B. & Adol. 840; 1 Nev. & M. 773.) A rule nisi for an information in the nature of a quo warranto was obtained on the ground of an undue removal of one person from, and an undue election of the defendant to, the office of town-clerk of the borough of Carnarvon. The rule did not mention, nor did the affidavit distinctly disclose the objection that the removal and election had taken place at a meeting without due notice that such was the business of the meeting: Held, that the objection of the want of such notice could not be taken in support of the rule. (Reg. v. Thomas, 8 Ad. & Ell. 183; 3 N. & P. 288.) Where the rule is moved for upon the ground that a party had vacated a corporate office by having

accepted a second incompatible office, the affidavits must clearly shew \*that the two offices are in fact incompatible, (see ante, 158;) and that the first office was of such a nature that the defendant could [\*184] divest himself of it by his own act, and without the concurrence of another authority to his resignation or motion, unless indeed such authority be shewn to have been privy and consenting to the second appointment. (*Rex v. Patteson*, 4 B. & Adol. 9; *Rex v. Pateman*, 2 T. R. 777; *Staniland v. Hopkins*, 9 Mee. & W. 178; *Id.* 193.) The affidavits must also shew a valid appointment to the second office, it not being sufficient to prove merely an acceptance and exercise of it by the defendant. (*Rex v. Day*, 9 B. & C. 702; 4 Man. & Ry. 541.) An acceptance of such second office by the defendant must however be proved. (Boston's case, cited in *Awdley's case*, Noy's R. 78.) "Without acceptance by the person appointed, it is clear that the first office would not be avoided." (Per Parke, J., in *Rex v. Patteson*, 4 B. & Adol. 22.)

The affidavit in support of an information in the nature of a quo warranto information must in all cases show that the defendant has *acted or fully taken upon himself the office or franchise in question*. There must be a user as well as a claim of a franchise, in order to found an application for an information in the nature of a quo warranto: stating that the defendant who was elected to an office had tendered himself to be sworn in is not sufficient. (*Rex v. Whitwell*, 5 T. R. 85.) A swearing in, though defective in law, yet being such whereby the party claimed at the time to be a free burgess of a corporation was held a sufficient user of the office to warrant an information in the nature of a quo warranto against him, and not like a mere claim to the office. (*Rex v. Tate*, 4 East, 337.) It is not sufficient if a person merely claims to be a burgess or freeman, if his name be not on the burgess-roll, and there does not appear to be any corporate property in which he could be entitled to an interest as a freeman. (*Reg. v. Pepper*, 7 Ad. & Ell. 745; 3 N. & P. 154.) The affidavit must show that the party is in office *de facto*, and for this purpose it is not enough if the affidavit state simply that he has \*accepted the office," without specifying the mode of acceptance, although it be sworn that the [\*185] presiding alderman has declared the party duly elected. (*Reg. v. Slatter*, 11 Ad. & Ell. 505; 3 Per. & D. 263.) But if it be shewn that the defendant having been declared to be duly elected to a corporate office has made the declaration required by sect. 50 of the 5 and 6 Will. 4, c. 76, that it seems would be sufficient. (*Rex v. The Mayor of Winchester*, 7 Ad. & Ell. 215; 2 Nev. & P. 274; and see *Rex v. Tate*, 4 East, 337.) So, if the affidavit state that the defendant has taken upon himself the office of councillor, and has *acted* in that capacity, and has been seen present at meetings of the council acting as a councillor, such affidavit will be sufficient although it does not further specify the nature of the acceptance or acting, nor shew that the defendant has made the declaration required by the statute. (*Reg. v. Quayle*, 11 Ad. & Ell. 508; 4 Per. & D. 442.) "There is a difference between *accepting* and *acting*; and if the party against whom the quo warranto is demanded has acted, it is immaterial whether he has accepted or not. I think the decision in *Rex v. Slatter* was correct. But there the deponent relied upon the statute, and shewed only that, upon his construction of it, the defendant had brought himself within its terms by accepting

office. That we did not consider sufficient without seeing what the acceptance was. But here it appears that the defendant has acted as a councillor, which is a clear intrusion." (Per Lord Denman, C. J., 11 Ad. & Ell. 511, S. C.) If the election was very recent before the rule nisi, it would be advisable to shew *how* the defendant has acted in the office. (Rex v. Morgan, 1 Jurist, 356.) It is sufficient if the affidavit state the deponent's *information and belief* that the party against whom the application is made has exercised the office. (Rex v. Slythe, 6 B. & C. 240; 9 D. & R. 226, S. C.; Rex v. Harwood, 2 East, 177; Rex v. Day, 9 B. & C. 702; 4 Man. & Ry. 541.)

Where written documents are mentioned in the affidavits, they should in general be set out *verbatim* or fair copies annexed, unless, owing to their length, or for some other \*special reason, it is considered unadvisable; but in no case should the original documents be annexed to the affidavits, for they cannot afterwards be obtained back from the Crown Office.

The *jurat* should mention the deponent's names if more than one; also the place and county where the affidavit is sworn, (Rex v. Cockshaw, 2 N. & M. 378; Rex v. the Justices of the West Riding of Yorkshire, 3 M. & S. 493;) but it seems sufficient if the county be mentioned in the affidavit and merely referred to in the *jurat*. (Rex v. Burn, 7 Ad. & Ell. 190; 2 N. & P. 152; 6 Dowl. 36, S. C.) The affidavit may be sworn *abroad*, (Rex v. The Editor of the Satirist, 3 N. & M. 532,) but not in any case before the relator's attorney. (Rex v. The Gaoler of Ipswich, 3 Lord Ken. 421; The Justices of Shrewsbury, 2 Barnard. 272.)

In Appendix B., Nos. 1 and 2, will be found precedents of affidavits for quo warranto informations against a burgess and also against a councillor. Those forms, together with the preceding directions, will be sufficient to enable proper affidavits to be had in any case.

4. *The Motion, how made and opposed.*—Before making the application for a rule to shew cause, counsel should take care to see that the affidavits in support of the application are complete and sufficient in every respect. (Ante, 176 to 186.)

In H. T. 7 & 8 Geo. 4 (1827,) a general rule of court was made as follows: "Whereas much vexation and expense have been occasioned to defendants in informations in the nature of quo warranto, by the practice of raising issues upon various matters distinct from the ground on which the information was granted by the court; now for providing a remedy in this behalf, It is ordered that from henceforth the objection intended to be made to the title of the defendant shall be *specified in the rule to shew cause*, and that no objection not so specified shall be raised by the prosecutor on the pleadings without the special leave of the \*court or of [\*187] some judge thereof." (6 B. & C. 267; 9 D. & R. 247.) As to the previous practice, see Rex v. Brown, 4 T. R. 276.

The grounds upon which the application is granted should be accurately indorsed by counsel on his brief, so that the proper officer may *copy them* into the rule to shew cause. In one case, where the grounds of application were not sufficiently stated in the rule nisi, the court afterwards allowed it to be amended. (Rex v. Atwood, 4 B. & Adol. 484.) But in general



no objection to the defendant's title can be taken, either on the pleadings or in support of the rule, except such as are specified in the rule to shew cause. (Reg. v. Thomas, 8 Ad. & Ell. 192—per Coleridge, J.)

The court will not grant a rule in the alternative for a quo warranto information or a mandamus. (Reg. v. The Mayor of Leeds, 11 Ad. & Ell. 512.) If the office be full of the applicant, a mandamus is the proper remedy, but if the office be *full de facto* of another person, although wrongfully, a quo warranto information should be applied for. (Ante, 147.)

One rule may be granted against several defendants, to show cause why an information or informations should not be exhibited against them to show by what authority they respectively claim to exercise the office or franchise in question. (Rex v. Ramsden and Others, 3 Ad. & Ell. 456; Rex v. Hanley and Others, 3 Ad. & Ell. 463, note.) In Rex v. Warlow, (2 M. & S. 75,) one rule was granted for eight several informations; the defendants wished to have them consolidated, or rather that one joint information against all the defendants should be filed. But Lord Ellenborough, C. J., said, "there must be several informations, in order to enable each defendant to disclaim, for this was not a joint offence." There seems however to have been some mistake in this, for by the stat. 9 Ann. c. 20, s. 4, it is enacted that one or more information or informations in the nature of a quo warranto may be exhibited with leave of the court. "And if it shall appear to the said respective courts, that the several rights of divers persons to the said offices or franchises may properly be determined on one information, \*it shall and may be lawful for the said respective courts to give leave to exhibit *one such information against several persons, in [188] order to try their respective rights to such offices or franchises.*" In Rex v. Foster and Others, (1 Burr. 573,) four rules having been made absolute for four informations in the nature of quo warranto against the four defendants respectively, to show by what authority they claimed to be chamberlains of Alnwick in the county of Northumberland, the court afterwards, at the instance of the defendants, ordered that there should be only one information against all the four defendants, instead of four distinct and separate informations. There are many precedents to be found in the books of information in the nature of a quo warranto against several defendants. (See Symmers v. Regem, in error, Cowp. 489; Rex v. Brown and Others, 3 T. R. 574, note; 6 Went. Prec. 153.)

Although somewhat unusual, it seems clear that one quo warranto information may be granted for two or more distinct offices; as, alderman and justice of the peace, (Rex v. Patteson, 4 B. & Adol. 9;) town clerk and clerk of the peace, (Reg. v. Thomas, 8 Ad. & Ell. 183;) recorder and justice of the peace, (2 Gude, 258;) deputy-recorder and justice of the peace. (2 Gude, 259.) In Coke's Entries, 527, and Rastall's Entries, there are several precedents of informations for usurping different offices and franchises, as many as 14 and 16 franchises being included in a single information. In Symmers v. Regem, in error, (Cowp. 489,) the information was filed against six different persons for usurping three different offices. The court held that such information was warranted by the Irish statute, 19 Geo. 2, c. 2, s. 4, which is very similar to the 9 Ann. c. 20, s. 4. Several quo warranto informations having been filed on the same grounds against different defendants for exercising the office of alderman of

the same corporation, one was tried, a verdict found for the Crown, and a rule nisi granted for a new trial, or to enter a verdict for the defendant. A rule nisi was then obtained for a stay of proceedings in the other informations pending the above application. The court discharged the rule upon [\*189] the prosecutor undertaking to \*proceed with only one other information till further order. But they refused to direct that either party should be bound by the result of such one proceeding. (*Rex v. Cousins*, 7 Ad. & Ell. 285; 2 Nev. & P. 164; 6 Dowl. 3, S. C.)

The rule to show cause must be obtained from the clerk of the rules at the Crown Office. (See the form of rule nisi against a burgess, Appendix B., No. 3; against a councillor, Id. No. 7.) A copy of the rule must be served on the defendant personally, or by leaving the same with his servant or some member of his family at his residence, at the same time showing the original rule. (*Rex v. Badouin*, 2 Stra. 1044; 1 Gude, 158; Id. 116.) An affidavit of such service should be forthwith made. (See the form, Appendix B., No. 4.)

*Shewing cause.*—The defendant cannot be permitted to shew cause against the rule, unless he has taken an office copy of the affidavits upon which the rule nisi was granted. In *Reg. v. The Inhabitants of Rotherham*, (21 Law J., M. C., 17,) a rule nisi was obtained for a certiorari. Upon counsel appearing to shew cause against it, *Pashley* objected that no office copy of the affidavit on which the rule nisi was granted had been taken, and that the rule of practice was inflexible. Lord Denman, C. J., (after consulting the officer)—“The practice is invariable as stated; and we cannot hear any cause shewn.” *Rule absolute.*

If the defendant be not prepared with his affidavits, &c., at the time mentioned in the rule nisi, he should instruct his counsel to inform the gentleman who moved for the rule that he shows cause against it. This will probably prevent the rule being brought on before the defendant is fully prepared; but if not, his counsel should be instructed to move the court to enlarge the rule either from the commencement to the latter end of the term, or from the end of the term to the ensuing term. Sometimes a short affidavit is necessary to explain the cause of the delay required. The court, on enlarging a rule nisi for a quo warranto information, at the instance of the defendant, usually impose on him terms, viz., to file his affidavits a certain number of \*days (usually about a week) before the enlarged day [\*190] for shewing cause. And where the rule is enlarged to the latter end of the same term, the defendant must undertake to appear immediately to the information when filed; but, if enlarged to the next term, he must not only undertake to appear immediately, but also to plead within the same time as he would be obliged to do if the rule were made absolute directly. (*Anon.*, 2 Barnard. 340; see the form of an enlarged rule, Appendix B., Nos. 5 and 8.) No such terms will be imposed where the prosecutor has delayed serving the rule nisi for an unreasonable term, and so prevented the defendant from being prepared to show cause against it. (*Reg. v. Anderson*, 9 Dowl. 1041.)

Affidavits made on behalf of the defendant may be intitled, “In the Queen’s Bench” (without more,) or “In the Queen’s Bench—The Queen against J. S.” (*Rex v. Jones*, 1 Stra. 704; *Rex v. Harrison*, 6 T. R. 60; *Rex v. Cole*, 6 T. R. 640.)

The defendant, on shewing cause against the rule, may raise (inter alia) any of the following objections that are applicable to his case; viz., that the office or franchise is of such a nature that a quo warranto information will not lie for the exercise of it: or that the information can be exhibited only by and in the name of the attorney-general *ex officio*, and not by a private relator, (ante, 162 :) that the relator has no sufficient interest, or has so acted as to become disqualified, (ante, 172 to 178 :) that the rule nisi does not specify the particular objection relied on against the defendant's title, pursuant to the rule of Hilary term, 7 & 8 Geo. 4, (ante, 186, 187 :) that the affidavits made in support of the application are improperly intitled, (ante, 181 :) that the jurat is defective, (ante, 186 :) that the affidavits appear to have been sworn before the relator's attorney, (ante, 186 :) that the affidavits are defective or insufficient in some material respect, (ante, 178 to 186 :) or have improperly suppressed some material fact, (Rex v. Hughes, 7 Barnewall & Cresswell, 719; 1 Manning & Ryl. 625, S. C. :) that such affidavits are clearly and satisfactorily answered by the affidavits \*made in opposition, (Rex v. Rolfe, 4 B. & Adol. 840; 1 N. & M. 773 :) but, upon this point, it must be remembered that, if the [\*191] affidavits on both sides be conflicting, *the court does not usually take upon itself to decide a doubtful matter of fact upon affidavits*. In Rex v. Mein, (3 T. R. 598,) Lord Kenyon, C. J., said, "It is objected that the evidence of the defendant outweighs that of the relator; now, admitting it to be so, that has never been held to be an answer to an application of this kind. Where there is evidence on both sides, the jury are the constitutional judges on which side the balance inclines; all that we are to look to is that a *fair doubt* is raised, and that the parties applying come with clean hands and in proper time." Where, however, the court is fully satisfied upon the affidavits, that in point of fact the objection to the defendant's title is unfounded, the rule will be discharged, (Rex v. Sargent, 5 T. R. 466: Rex v. Orde, 8 Ad. & Ell. 420 :) but the court will not discharge the rule upon affidavits shewing *new matter*, which the relator has had no opportunity of answering. Thus, where the question is, who had the majority of legal votes at an election, and the prosecutor, in support of his application, proves, that although the defendant had a colourable majority, yet that several of his votes were bad ones for certain specified reasons, and that deducting them the prosecutor had a majority of votes; it will be no answer to the rule (whatever it may be at the trial) to prove that several of the votes given for the prosecutor were also bad ones, and that, deducting the bad ones on both sides, the defendant had the majority. (Reg. v. Grierson, T. T. 1842: Reg. v. Quayle, 11 Ad. & Ell. 508.) There Williams, J., said, "This is not like a case where affidavits are produced denying the truth of the facts on which the rule is obtained. We cannot abide by the oath of the party who swears last as to facts which he is the first to bring forward."

The defendant may also object that in *point of law* he has been duly elected or appointed and is not disqualified. (Rex v. Chitty, 5 Ad. & Ell. 609; 1 N. & P. 78.) But where \*the right depends upon a [\*192] matter of *doubtful law* the court will not usually decide it in a summary manner upon argument of the rule, and the course is to make the rule absolute in order that the question may be raised upon the pleadings

and finally determined. (*Rex v. Carter*, Cowp. 58: *Lofft*, 516: *Rex v. Godwin*, 1 Doug. 397: *Rex v. Sandys*, 2 Barnard. 402.)

The defendant may also object that the application is made for an *improper collateral purpose* which the court will not sanction: as to attack indirectly the charter of a corporation of which the defendant is a public officer, (*Reg. v. Taylor*, 11 Ad. & Ell. 949; 3 Per. & D. 652;) or to question the defendant's right to compensation under the 5 & 6 Will. 4, c. 76, s. 66, as a displaced town-clerk. (*Rex v. Harris*, 7 Ad. & Ell. 475; 1 Nev. & P. 576.) But the *motives of a relator* in making the application will not usually be gone into, except where he appears to collude with a stranger for the purpose of dissolving a corporation, and the proceeding seems calculated to have that effect, (*Rex v. Trevenen*, 2 B. & A. 339;) and even then it appears that the rule will not be discharged, although the relator be in insolvent circumstances, but the court in such a case required security for costs, (*Rex v. Wakelin*, 1 B. & Adol. 50;) probably because of the fraud. (*Rex v. Wynne*, 2 M. & S. 346.)

It is no objection to the rule that a similar application has been previously made against the defendant without success, unless such application was made at the instance of the same relator, (*Rex v. The Aldermen of New Radnor*, 2 Ld. Ken. 498: *Rex v. Bond*, 2 T. R. 767: *Rex v. Slythe*, 6 B. & C. 240;) but it is clearly settled that a second application cannot be made at the instance of the same relator, even upon amended affidavits. (*Ante*, 179.)

If sufficient cause be shewn against the rule, the court will discharge it, either with or without costs according to their discretion. If nothing be said about costs, and the rule is discharged, the defendant will not be entitled to any costs, therefore his counsel should take care to *ask for them*, [\*193] if necessary, at the time the rule is discharged. If the rule be charged upon some technical objection, independent of the real merits, it is not the practice of the court to grant the defendants costs in such cases. (*Reg. v. The Proprietors of the Nottingham Journal & Others*, 9 Dowl. 1042.) But if the court deem the application frivolous and groundless, or one that under the circumstances ought not to have been made, the court will discharge the rule with costs. (*Rex v. Carpenter*, 2 Stra. 1039: *Rex v. Kemp*, 1 T. R. 46: *Rex v. Lewis*, 2 Burr. 780: *Rex v. Wardroper*, 4 Burr. 1963.) Where the court discharge the rule on a defect in the affidavits in support of it, they may adjudge costs to be paid by a deposing party, not being the proposed relator, who from the circumstance of his being an attorney must be presumed cognizant of such defect, or where there is an affidavit in answer shewing good grounds for such presumption; but if the rule is discharged on the affidavits in answer, then such an order should not be made. (*Reg. v. Greene*, 20 Law J., Q. B., 281.)

Sometimes the court, on making the rule absolute, will order the relator to give security for costs beyond the usual £20 recognizance, if the relator appears to be in indigent circumstances, and to be colluding with a stranger, or not acting bona fide. (*Rex v. Wakelin*, 1 B. & Adol. 50; *Reg. v. Dudley*, 7 Dowl. 700.) But they will not do so where the information does not fall within the provisions of 9 Ann. c. 20. (*Rex v. Brooke & Others*, 2 T. R. 190.) Nor where the relator is a corporator and no fraud is suggested. (*Rex v. Wynne*, 2 M. & S. 346.)

The rule when made absolute is drawn up by the clerk of the rules in the Crown Office. (See the form, Appendix B., No. 9.) It seems unnecessary to serve a copy on the defendant or his solicitor, but it is more usual to do so. It may sometimes be important to the defendant to see that the rule is drawn up, *not on all the grounds specified in the rule to shew cause*, but upon such only with respect to which the court think fit to make the rule absolute, for it may affect the subsequent pleadings. (See post, 218.)

## CHAPTER V.

[\*194]

### THE INFORMATION—HOW FRAMED—OUTLINE OF: AND GENERAL RULES.

AN Information in the nature of a Quo Warranto is to the following effect:—

#### 1st.—By the Attorney-general ex officio.

Of                      Term, in the                      year  
of Queen Victoria.

*Middlesex,* } BE it remembered, That Sir Frederick Pollock, Knight, Attorney-General of our present Sovereign Lady the Queen, who for our said Lady the Queen in this behalf prosecuteth, in his proper person, cometh here into the court of our said Lady the Queen, before the Queen herself at Westminster, on [Thursday] the                      day of                      , in this same term, and for our said Lady the Queen giveth the court here to understand and be informed, That [*here state the facts and circumstances as in an indictment, showing the nature of the office or franchise, and the use and exercise of it by the defendant without any legal warrant, royal grant, or right whatsoever, concluding each count with an allegation that the defendant usurped such office or franchise*], “in contempt of our said Lady the Queen, to the great damage and prejudice of her royal prerogative, and also against her crown and dignity.” *Begin each new count thus*, “And the said Attorney-General of our said Lady the Queen, further giveth the court here to understand and be informed, That,” &c. *Conclude the information as follows:* ] “Whereupon the said Attorney-General of our said Lady the Queen, for our \*said Lady the Queen, prayeth the [\*195] consideration of the court here in the premises, and that due process of law may be awarded against him the said J. S. in this behalf, to make him answer to our said Lady the Queen, and shew by what authority he claims [*or claimed*] to have, use, and enjoy the [office], liberties, privileges, and franchises aforesaid.”

(Signed)                      F. POLLOCK.

## 2d.—By the Master of the Crown Office.

Of Term, in the Term  
of Queen Victoria.

*Liechfield,* } Be it remembered, That Charles Francis Robinson, Esquire,  
                  } Coroner and Attorney of our present Sovereign Lady the Queen,  
in the court of our said Lady the Queen, before the Queen herself, who  
for our said Lady the Queen in this behalf prosecuteth, in his proper per-  
son, cometh here into the court of our said Lady the Queen, before the  
Queen herself at Westminster, on [Monday] the      day of      , in this  
same term, and for our said Lady the Queen, at the relation of E. F., of  
                  , in the county of      , [surgeon,] according to the form of the  
statute in such case made and provided, giveth the court here to under-  
stand and be informed, That [*here state the facts and circumstances as in  
an indictment, shewing the nature of the office or franchise, and the use  
and exercise of it by the defendant without any legal warrant, royal grant,  
or right whatsoever, concluding each count with an allegation that the  
defendant usurped such office or franchise,* "in contempt of our said Lady  
the Queen, to the great damage and prejudice of her royal prerogative, and  
also against her crown and dignity." *Begin each new count thus,* "And  
the said Coroner and Attorney of our said Lady the Queen, for our said  
Lady the Queen, further giveth the court here to understand and be  
informed, "That," &c. *Conclude the information as follows:*] "Where-  
[\*196] upon the said Coroner and \*Attorney of our said Lady the Queen,  
for our said Lady the Queen, prayeth the consideration of the court  
here in the premises, and that due process of law may be awarded against  
him the said J. S. in this behalf, to make him answer to our said Lady the  
Queen, and shew by what authority he claims to have, use, and enjoy the  
office, liberties, privileges, and franchises aforesaid."

(Signed)

C. F. ROBINSON.

The general rules of pleading are applicable to informations in the nature of quo warranto in the same manner as to indictments; the same certainty and precision are required in each, the main difference between them in point of form being that in indictments the facts are *presented by the jury on their oath*, whereas in quo warranto informations the court is *informed* of the facts by the Attorney-General ex officio, or by the Master of the Crown Office at the relation of a relator or relators. In 2 Hawk. P. C. c. 26, s. 4, it is said, that "An information differs from an indictment in little more than this, that the one is found by the oath of twelve men, and the other is not so found; but is only an allegation of the officer who exhibits it: whatsoever certainty is requisite in an indictment, the same at least is necessary also in an information, and consequently as all the material parts of the crime must be precisely found in the one, so must they be precisely alleged in the other, and not by way of argument or recital."

In the information at common law there is not any relator, (2 Selwyn's

N. P. 1165, 9th ed.; Buller's N. P. 207,) and therefore it seems not essentially necessary to name the relator in any information not falling within the 9 Ann. c. 20, that is to say, where it does not relate to any corporate office, or franchise of a corporate nature in a corporate place. But it is now the invariable practice to name the relator in all quo warranto informations exhibited by the Master of the Crown Office; for the mention of a relator when unnecessary is mere surplusage, and will not hurt the \*common-law judgment. (Per Denison, J., in *Rex v. Williams*, 1 Burr. 408; [\*197] ante, 122.)

The information need not state that it is filed by leave of the court, pursuant to the statute. (*Symmers v. Regem*, in error, Cowp. 489.)

It is not necessary to set forth in the information the whole constitution of the place; or to show whether the office is by charter or prescription. If it be alleged to be an office which appears upon the face of the information to concern the public, this is sufficient against the person who usurps it. Hence the court permitted an information to be exhibited against the defendant who exercised the office of bailiff of a ville, because it appeared that it was a public office, and concerned the government of the ville, and the administration of public justice. (*Rex v. Boyles*, 2 Stra. 836; 2 Lord Raym. 1559, S. C.) The information for usurping a corporate office, usually alleges that the office in question "is a public office, and an office of great trust and pre-eminence within the borough, touching the rule and government of the said borough, and the administration of public justice within the same borough." Such an allegation is admitted by a demurrer, (*Rex v. Boyles*, supra,) or by pleading over. In *Rex v. McKay*, (4 B. & C. 351; 6 D. & R. 432,) the information stated that the office of bailiff of the borough was "an office of great trust and pre-eminence within the said borough, touching the rule and government of the borough, and the election and return of burgesses to serve for the commons in Parliament for the said borough." The defendant's pleas shewed that he had been elected to the office, and traversed "that the office of bailiff was an office *touching the rule and government of the borough*." Held, that the defendant, not having traversed that the office "was one of great trust and pre-eminence within the borough, touching the election and return of burgesses to serve in Parliament for the said borough," had admitted it to be so, and that for such an office a quo warranto would lie.

\*In Appendix B., No. 12, will be found the form of an information in the nature of a quo warranto exhibited by the Attorney-General ex officio against the defendant for unlawfully holding a fair at Edmonton, with pleas and replications, &c. In *Rex v. Amery*, (2 T. R. 517,) an ex officio information against the mayor and citizens of the city of Chester, (35 Car. 2,) for presuming to act as a corporation, is recited and set forth upon the pleadings, (and see Co. Ent. 527 b.) There is a collection of quo warranto informations by the Attorney-General, ex officio, for the usurpation of various franchises in Coke's Entries, tit. Quo Warranto, an index to which will be found in Comyn's Dig. tit. Quo Warranto, (A.,) ante, 111.

In Appendix B., Nos. 13, 14, and 15, will also be found precedents of informations in the nature of quo warranto, by the Master of the Crown Office, at the instance of a relator, against persons for usurping the several

offices of mayor, alderman, councillor, auditor, and assessor of a borough; also the office or franchise of being a burgess or freeman. The following further precedents may be referred to: viz. against a recorder and justice of the peace, (2 Gude, 258;) a deputy recorder and justice of the peace, (2 Gude, 259;) a common clerk or town clerk, (2 Gude, 262;) a portreeve of a borough, (2 Gude, 261. 273;) a serjeant of a borough, (2 Gude, 275;) a bailiff or sub-bailiff, (2 Gude, 271. 280. 310;) the master of the Company of Coopers in London, (6 Went. Prec. 63.)

The draft information having been prepared, and if necessary settled by counsel, should be delivered to the prosecutor's clerk in court to be engrossed and filed. The latter causes it to be engrossed on parchment, and gets it signed by the Master of the Crown Office. The information may then be filed either before or after a recognizance is entered into. (1 Gude, 160.) But no process thereon can regularly issue against the defendant until the recognizance be filed pursuant to the stat. 4 & 5 Will. & M. c. 18. (*Rex v. The Mayor and Aldermen of Hertford*, 1 Salk. [\*199] \*376; *Carthew*, 503, S. C.; 2 Hawk. c. 26, ss. 8. 10.) The practice is always to file the recognizance before or at the same time as the information.

Ex officio informations are merely signed by the Attorney-General, and then filed without any rule of court or recognizance.

A quo warranto information cannot be quashed on motion, though both parties consent. (*Rex v. Edgar*, and *Rex v. Bricknell*, 4 Burr. 2135.) It may generally be amended even after it has been demurred to. (*Post*, 207.)

[\*200]

## \*CHAPTER VI.

## OF THE RELATOR'S RECOGNIZANCE, AND THE MODE OF COMPELLING THE DEFENDANT TO APPEAR AND PLEAD TO THE INFORMATION.

IMMEDIATELY upon the rule being made absolute for an information in the nature of a quo warranto, the prosecutor's clerk in court (if so instructed) will prepare the necessary recognizance pursuant to the statute 4 & 5 Will. & M. c. 18. (See the form, Appendix B., Nos. 10 and 11.) It must be entered into by the relator himself, either before the Clerk of the Crown, i. e. the Master of the Crown Office, or before a justice of the peace of the county, city, franchise, or town corporate where the cause of the information arose. After a rule for a quo warranto information has been made absolute, the court will change the relator on motion on his behalf, if by reason of his necessary absence from England in the conduct of his own private affairs he is unable to enter into the necessary recognizance. (*Reg. v. Quayle*, 9 Dowl. 548.) Until the information and recognizance are both filed in the Crown Office no process can lawfully issue against the defendant. (*Rex v. The Mayor and Aldermen of Hertford*, 1 Salk. 376; *Carthew*, 503, S. C.; 2 Hawk. c. 26, ss. 8, 10.)

When the information and recognizance have been filed, the prosecutor's clerk in court (if so instructed) will make out and issue a writ of subpoena



to compel the defendant to appear to and answer the information. (See the form, Appendix B., No. 16.) The writ is made returnable on a day certain in term time, and a copy should be served on or before the return day, but not later than the rising of the court on the return day of the writ. The service need not be personal; leaving a copy of the writ and indorsements \*therein at the defendant's residence, with some member of his family or his servant (shewing the original,) is sufficient. (1 [\*201] Gude, 120.) An affidavit of service should be forthwith made. (See the form, Appendix B., Nos. 17 and 18.)

The defendant has four days after the return of the subpoena, exclusive of Sunday, to appear, when an appearance for him must be entered by his clerk in court in the Crown Office. If such appearance be not entered, the prosecutor's clerk in court, upon being furnished with an affidavit of service of the writ of subpoena, will issue an attachment. (See the form, Appendix B., No. 19.) Such writ is executed by the sheriff in the usual manner, and the defendant cannot be discharged out of custody until he has entered an appearance, when his clerk in court may issue a supersedeas. If the defendant *abscond* before entering an appearance, and cannot be taken under an attachment, he may be proceeded against to outlawry in precisely the same manner as upon a criminal information. (Ante, 77.)

Against corporations aggregate a distringas issues instead of an attachment, if no appearance be entered to the subpoena. (2 Hawk. c. 27, ss. 6. 14.) There must be fifteen days between the teste and return of a distringas if it issue into a foreign county. (Rex v. The Mayor and Aldermen of Hertford, 1 Salk. 374; Carthew, 503, S. C.)

If the rule nisi for the information was enlarged at the instance of the defendant, upon an undertaking on his part to *appear immediately* to the information in the event of the rule being made absolute, or upon his undertaking to put the prosecutor in the same situation, &c., then it is not necessary to sue out and serve a writ of subpoena, but upon the information and recognizance being filed, a notice should be served upon the defendant or his solicitor, stating that the information is filed, and requiring the defendant to enter an appearance thereto, otherwise an attachment will be moved for against the defendant for his contempt. (See the form, Appendix B., No. 20.) If an appearance be \*not entered by the defendant pursuant to such notice, then upon affidavit of service thereof, and of [\*202] the defendant's non-appearance, and upon production of the rule containing the defendant's undertaking, the court may be moved for an attachment against him.

If the defendant is *in custody*, and does not enter an appearance, and the prosecutor is desirous of proceeding (although not compellable to do so,) he may "charge the defendant with the information" as follows:—the signature of counsel must be obtained to a motion paper for a habeas corpus (fee 10s. 6d.;) which writ is thereupon made out and issued by the prosecutor's clerk in court. The writ is directed to the sheriff or gaoler and requires him to bring the defendant into court to be charged with the information. The prosecutor's clerk in court must have the information in court when the defendant is brought up. Counsel must also be instructed to move that the defendant may stand charged with the information (fee 10s. 6d.) Upon the defendant being brought into court upon the habeas corpus, he is

"charged with the information," which is read to him, and he is then called upon to plead. Unless he confesses himself guilty of the usurpation, or come prepared with a proper plea, he craves time to answer the information, and is of course remanded. He must afterwards be again brought into court upon another habeas corpus, in a similar manner, when, if he do not plead, judgment by default may be recorded against him,

*Time to plead.*—In ordinary cases (where no special undertaking has been given) the prosecutor's clerk in court may enter a four-day rule to plead, immediately the defendant appears. At the expiration of that rule a second rule to plead may be entered, which also expires in four days inclusive. Unless both these rules expire before the last day of term, the defendant cannot be compelled to plead until the following term, (*Rex v. Ginever*, 6 T. R. 594;) for although the stat. 4 Ann. c. 20, s. 4, enacts, [\*203] that a defendant in a quo warranto information shall \*appear and plead as of the same term in which the information was filed, unless the court shall give him further time to plead, it is clear that a defendant is not bound in all cases to plead in the same term. "The statute meant that the prosecutor should file his information so as to give rules to plead according to the course of the court within the term." (Per Buller, J., in *Rex v. Radford*, 6 T. R. 595, note (c)). After the expiration of the second four-day rule to plead, the prosecutor may, in term time, upon a motion-paper, signed by counsel (fee 10s. 6d.,) obtain a peremptory rule to plead within two days in town cases, or within ten days in country cases; and, if the defendant do not within that time plead or obtain a judge's order for further time, judgment may be signed against him by default.

If the defendant has in the enlarged rule undertaken, not only to appear to the information immediately, but also to plead to it so that the prosecutor may go to trial at the ensuing assizes, it seems that the usual rules to plead are unnecessary. But upon the information being filed, a notice thereof should be served, requiring the defendant to appear and plead thereto in pursuance of his undertaking, otherwise judgment by default will be signed by the prosecutor's clerk in court. And, if the defendant do not accordingly appear and plead, judgment by default may be signed with leave of the court, which however, should not be applied for before the expiration of a reasonable time, for the defendant to appear and plead. (*Reg. v. Muntz*, H. T. 1838, 2 Jurist, 538.)

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[\*204]

## CHAPTER VII.

OF DEFENCES AND PLEAS TO INFORMATIONS IN THE NATURE OF QUO WARRANTO. 1. JUDGMENT BY DEFAULT. 2. DISCLAIMER. 3. PLEA IN ABATEMENT. 4. DEMURRER AND PROCEEDINGS THEREON. 5. PLEAS IN BAR. 6. REPLICATIONS AND SUBSEQUENT PLEADINGS. 7. THE ISSUE, RECORD, ETC.

THE defendant may either suffer judgment by default or disclaim; or, (if

he intend to make resistance) he may demur to the information, or plead thereto in abatement or in bar. And, if the information relate to any corporate office or franchise of a corporate nature in a corporate place (but not otherwise,) he may plead several pleas in bar, with leave of the court, (ante, 129 ;) and such pleas may be either by way of traverse or in justification. We now propose to consider each of the above modes of proceeding.

1. *Judgment by Default.*—If the defendant do not plead within the time allowed for that purpose, (ante, 202,) judgment may be signed against him by default; and such judgment is final; viz. that the defendant be ousted, &c. (See the form, Appendix B., No. 21.) Where the defendant has no defence it is more usual to disclaim than to suffer judgment by default; for by a disclaimer some delay, and also the costs of the usual rules to plead, may be avoided. But a disclaimer enables the relator to sign judgment when it suits his own purpose or convenience.

2. *Disclaimer.*—If the defendant be satisfied from what took place when the rule was made absolute for the information, that he has no valid title to the office or franchise in question; or, if he be not disposed to incur the risk and expense of defending his title, the most usual course is [\*205] to disclaim. (See form of warrant to disclaim, Appendix B., No. 22.) Whereupon judgment of ouster, &c., may be immediately entered. The disclaimer is prepared by the defendant's clerk in court and signed by counsel (fee 10s. 6d.) (See the form of a disclaimer and judgment thereon, Appendix B., No. 23.) In one case the court, under special circumstances, gave liberty to the defendant to enter a disclaimer without costs. (Rex v. Holt, 2 Chit. R. 366.)

3. *Plea in Abatement.*—Formerly the defendant might plead in abatement, if he was not rightly named, or not correctly described in the information, in like manner as he might so plead to an indictment. (Arch. Pl. & Ev. C. C. 29, 8th ed.; Id. 80, where see form of plea of misnomer.) In 6 Went. Prec. 51, will be found a plea in abatement of a quo warranto information, that the defendant is a yeoman and not an esquire. Pleas of this description required to be verified by an affidavit properly intitled. (Rex v. Jones, 2 Stra. 1161.) And although the court always strongly discountenanced such pleas, and even expressed their abhorrence of them, they would not set them aside *upon motion*. (Rex v. The Mayor of Heyden and Another, 1 W. Blac. R. 34.) But now, by stat. 7 Geo. 4, c. 64, s. 19, it is provided, "That no indictment or information shall be abated by reason of any dilatory plea of misnomer or want of addition, or of wrong addition of the party offering such plea, if the court shall be satisfied by affidavit or otherwise of the truth of such plea; but in such case, the court shall forthwith cause the indictment or information to be amended according to the truth, and call upon the party to plead thereto, and proceed as if no such dilatory plea had been pleaded." So that, in effect, pleas in abatement are abolished.

4. *Demurrer.*—The defendant may demur to the information; but

[\*206] \*this can seldom be done with any hope of success ; for informations in the nature of quo warranto are generally drawn in a certain form, which has been long settled ; and it scarcely ever happens that a quo warranto information is so defective as to be open to a demurrer. But sometimes a trial at the assizes, and also an immediate judgment of ouster, may be avoided by a demurrer ; and for political and other reasons it may be deemed expedient to adopt that course.

A demurrer admits the truth of the allegations contained in the information ; as, that the office in question is a public office touching the rule and government of the borough, and the administration of public justice within the same borough. (*Rex v. Boyles*, 2 Stra. 836 ; 2 Ld. Ray. 1559, S. C. ; and see *Rex v. McKay*, 4 B. & C. 351 ; 6 D. & R. 432, S. C.)

By stat. 4 & 5 Ann. c. 16, s. 1, the court may give judgment on demurrer, according as the very right of the cause and matter in law shall appear to them, without regarding any imperfection, omission, or defect in any writ, return, plaint, declaration, or other pleading, process, or proceeding whatsoever, *except those only which the party demurring shall specially and particularly set down and express, together with his demurrer, as causes of the same*, notwithstanding that such imperfection, omission, or defect might have theretofore been taken to be matter of substance, and not aided by the statute made in the 27th year of Queen Elizabeth (c. 5,) intituled, "An Act for the furtherance of Justice in case of Demurrer and Pleadings;" so as sufficient matter appear in the said pleadings, upon which the court may give judgment according to the very right of the cause.

By 9 Ann. c. 20, s. 7, the above statute, and all the other statutes of jeofails, are extended to informations in the nature of quo warranto, and proceedings thereon, "for any matters in this act mentioned;" i. e. the usurpation of corporate offices and franchises of a corporate nature in corporate places. (Ante, 122.) In such cases it is, therefore, necessary for the defendant to *demur specially* when the objection relied on is a mere [\*207] formal or technical one, independent of the substantial merits and justice of the case. (See the form of a demurrer (general or special) with joinder, cur. adv. vult, and judgment thereon, Appendix B., No. 24.) The Crown does not seem to be bound by the above statute not being expressly named therein. (*Attorney-General v. Donaldson*, 7 Mee. & W. 422 ; 9 Dowl. 319.)

The rule of Hilary term, 4 Will. 4, which requires the grounds of demurrer to be stated in the margin, extends only to personal actions in which the three superior courts of common law at Westminster exercise concurrent jurisdiction. (*Rex v. Woollett*, 2 Cr., M. & R. 256 ; 5 Tyr. 786, S. C.) Therefore no marginal note is necessary to a demurrer to any pleading in quo warranto. (But see 1 Q. B. Reports, 883, note (b).)

The draft demurrer, as prepared and signed by counsel, is handed to the defendant's clerk in court, who makes a fair copy thereof, and delivers it to the clerk in court for the prosecutor ; he also makes an office copy for the defendant. A joinder in demurrer may then be compelled in the same way as a replication to a plea ; viz., by a side-bar rule, and subsequent peremptory rule in term time, or by a notice to join in demurrer in vacation. (See post, 214.) After demurrer to an information, a judge's order may be

obtained, upon summons returnable at his chambers or house, to amend the information. (Per Lord Mansfield, C. J., in *Rex v. Wilkes*, 4 Burr. 2532.) And so with respect to criminal informations. (Ante, 84.) Even after argument on a demurrer to a special plea to a quo warranto information, the court have permitted such plea to be amended, (*Rex v. Birch*, 4 T. R. 608; *Rex v. Blackford*, 4 Burr. 2147;) but this is not usual. It is, however, nearly a matter of course to permit an amendment immediately after a pleading has been answered or demurred to, upon the payment of costs and other fair terms, as, liberty to plead de novo, &c.

When there is a demurrer to the information, or to any subsequent pleading and joinder in demurrer, either party \*may move for a concilium. The motion paper is indorsed, "The Queen against J. S., [\*208] on behalf of the prosecutor (or the defendant, *as the case may be*,) to move for a concilium" (fee 10s. 6d.) This, when signed by counsel, is taken to the clerk of the rules in the Crown Office, who enters a rule for the concilium (which is not formally drawn up,) and sets the demurrer down in the Crown paper for argument. Notice thereof should be thereupon immediately given to the clerk in court or the solicitor for the other side. The clerk in court for each party then makes an office copy of the demurrer book for his own client, and also two copies for the judges. The clerk in court for the prosecutor delivers his two copies to the two senior judges; and the clerk in court for the defendant delivers his two copies to the two puisne judges. The points of law intended to be argued must be stated by each party in the margin of his copy demurrer books, (1 Q. B. 883, note (b);) and copies of such point must also be delivered to the other two judges, or written in the margin of the copy demurrer books delivered to them by the opposite party. The paper books, &c., must be so delivered at least two days before the day appointed for the argument. The solicitor for each party prepares a brief and instructs counsel—Queen's counsel cannot argue on behalf of the defendant without a special license from the Crown for that purpose; which license must be actually obtained (and not merely a certificate of the fees paid) before the case comes on for argument, (*Reg. v. Jones*, 9 C. & P. 401,) although such certificate will be sufficient to induce the counsel to accept the brief. To obtain the license a petition must be addressed to the Queen, and lodged with the Secretary of State for the Home Department. (See the form, Appendix B., No. 53; Form of the License, Id. No. 54.) The Crown paper must be carefully watched from time to time. It is taken *every Wednesday and Saturday* in term time, except the first four and the last four days of term. When the case is called on, counsel in support of the demurrer is first heard—then the counsel on the other side,—and then counsel in \*reply. Only one coun- [\*209] sel can be heard on each side; but in important cases a second counsel is sometimes employed to take notes and make suggestions during the argument. The court then (or after taking time to consider) give judgment, either for the Crown or for the defendant, as to them seems fit. A rule for judgment is drawn up by the clerk of the rules, and thereupon judgment may be entered accordingly. (See the form, Appendix B., No. 24.) The costs are taxed by the Master of the Crown Office. Execution issues as in other cases, viz. by *fi. fa.*, *ca. sa.*, or *elegit*. (See the forms, Appendix B., Nos. 61, 62, 63.)

5. *Pleas in Bar.*—If the information relate to any corporate office or franchise of a corporate nature in a corporate place (but not otherwise,) the defendant may, with leave of the court, plead several pleas in bar. (Ante, 129.) In *Rex v. W. Smith*, (3 M. & S. 583,) the defendant pleaded five pleas, shewing his title in various ways. If the defendant succeed upon any one plea, which is a complete bar to the information, he will be entitled to a judgment, allowing his office or franchise &c. with costs against the relator. (See the form of judgment for the defendant upon a demurrer to his plea, Appendix B., No. 34.) The like after verdict. (Id. No. 59.) Where the defendant pleads only one insufficient plea it amounts to a confession of the usurpation charged upon him. (*Rex v. Phillips*, 1 Stra. 394.) If the defendant do not completely succeed upon any one sufficient plea, (that is to say) if some of the issues arising out of it are found for and some against him, the judgment must be of ouster, &c.; for one or more links of the chain of his title being broken the whole falls to the ground, and the relator is entitled to full costs upon all the issues, including those upon which he has failed. (*Rex v. Downes*, 1 T. R. 453.)

The defendant cannot plead *not guilty* or *non usurpavit*, that he did not usurp the office or franchise in question, (Bull. N. P. 207, 1st ed.; 2 Selwyn's N. P. 1185, 9th ed.;) for if he has in fact used or exercised the [\*210] office or franchise \*he must shew by *what authority* he has done so, setting out his title specially, and concluding with an *absque hoc* that he usurped the office, &c. as alleged. Such conclusion is mere form, and cannot be denied by the replication, which must traverse to avoid the title of the defendant as set out in his plea, or demur to it for its insufficiency. This is well illustrated in the case of *The Queen v. Blagden*, (10 Mod. 211; Id. 296.) That was a *quo warranto* information against a portreeve of Honiton. The defendant in his bar set forth his right to that office, and concluded with a traverse *absque hoc* that the defendant usurped the office: the Crown in its replication taking no notice of the special title set forth by the defendant, joined issue upon the traverse *quod usurpavit* &c., and upon this demurrer was joined. Parker, C. J., said, "The question turns upon this, whether the traverse be only matter of form; for if so the Crown cannot take issue upon it; but if it be a material part of the plea, most certainly the Crown may do it." Afterwards the case was further argued, when the court were all of opinion that the defendant should have judgment, (Id. 296:) and Parker, C. J., said, "Nobody even thought that non usurpavit was a good plea, and the reason why it is not, evidently appears from the nature of the charge, which is for him to shew by what warrant or authority, &c., to which that plea is no answer. And, if this could not have been pleaded in bar, then most certainly that replication, which in effect sets up that plea again, must be naught. If non usurpavit were a general issue allowed in this case, all the rest of the pleadings would be to no other purpose but to lengthen the record." Pratt, J., also said, "I am of the same opinion, for had non usurpavit been a good plea, every body would certainly have pleaded it; because, by this means, the attorney-general would be kept in the dark, and unacquainted with the nature of the defendant's title; and the hazard of setting forth a special title, where the greatest certainty in pleading is required, might be wholly

avoided. Besides, the labour of pleading specially is \*entirely lost, [\*211] if all may be set aside by a general replication.

The defendant may, however, plead that he did not *use or exercise* the said office, liberties, &c. (See the form, Appendix B., No. 25.) But this can seldom be useful, (except for delay,) as it merely denies that the defendant took upon himself the office or acted therein; which fact must be clearly shewn by the affidavits made in support of the application for leave to exhibit the information. In one case the defendant pleaded that he was duly elected, but that he had never been sworn in, nor otherwise taken upon himself the office, nor acted in it. The court, upon a writ of error, reversed a judgment of ouster entered against him. (*Rex v. Ponsonby*, Sayer's R. 245; 2 Bro. P. C. 311; 1 Ld. Ken. 1; 1 Ves. Jun. 1, S. C.) The defendant may plead as to part of the time in the information mentioned (specifying it exactly) that he did not use or exercise the office, &c., and as to the residue, a justification shewing his right and title to the office. (6 Went. Prec. 41.) But in such a case it is clearly sufficient to plead the special plea only, which concludes with an *absque hoc*, &c. The defendant may plead as to part of the time a confession of the usurpation, and as to the residue, a justification shewing his election, &c. (See the form, Appendix B., No. 27.) And if the latter plea be found in the defendant's favour, the judgment must be not of ouster, but merely that the defendant be fined for the usurpation confessed. (*Rex v. Biddle and Another*, 2 Stra. 952: *Rex v. Taylor*, 2 Barnard. 238. 280. 316. 320.) This mode of pleading may be useful where the defendant has presumed to act before being *duly sworn* in or otherwise lawfully admitted; but afterwards, and before the information is actually exhibited, is duly admitted. For if, under such circumstances, a judgment of ouster be obtained against the defendant, it will prevent him from afterwards making title to the office without a new election. (*Rex v. Clarke*, 2 East, 75: *Rex v. Courtenay*, 9 East, 246. 267: *Rex v. Hearle*, 1 Stra. 625; 11 Mod. 390.) A good defence arising after the application for the information, \*but existing before and at the time of the exhibiting the information, may of course be pleaded. (Reg. v. [\*212] *Harris*, 11 Ad. & Ell. 518; 3 P. & D. 266; 8 Dowl. 499, S. C.: *Rex v. Stokes*, 2 M. & S. 71.)

The defendant may also traverse any material allegation contained in the information; as, that the office in question is a public office, touching the rule and government of the borough, and the administration of public justice within the said borough, or "touching the election and return of burgesses to serve in the Commons House of Parliament for the said borough." And such allegation or any part thereof, not expressly traversed, will be considered as admitted. (*Rex v. McKay*, 4 B. & C. 351; 6 D. & R. 432.)

The defendant cannot plead in general that he was *duly elected*. (Per Lord Mansfield, C. J., in *Rex v. Leigh, Esq.*, 4 Burr. 2144.) But he must shew *how* he was elected or appointed to the office, and how he was admitted to or took upon himself such office. Formerly the pleadings were very long and special, because it was necessary to shew the various customs, charters, and bye-laws of the particular corporation, and an election or appointment in strict accordance therewith. (See *Rex v. Langhorn*, 4 Ad. & Ell. 538; 6 N. & M. 203: *Rex v. Johnson*, 5 Ad. & Ell. 488.) And a defendant having a good title to the office in question, was bound to plead

such title *accurately*, and to put it on the right ground, otherwise judgment of ouster would pass against him, although it appeared on the face of the record that he had a good title to the office. Thus, in *Rex v. Leigh, Esq.*, (4 Burr. 2143,) the defendant claimed to be mayor of Yarmouth under two titles; namely, under a prescription, and also under a charter. But he had by his plea put his defence upon his claim under the prescriptive right, which was tried and found against him: it appeared upon the face of the whole record, that he had a good title under the charter:—Held, that the Crown was entitled to judgment; and Lord Mansfield, C. J., said, “That the defendant is obliged to shew a title, and the king has no need to traverse any thing but the title set up. \*If any one material issue is found for [\*213] the Crown, the Crown must have judgment.” Yates, J., also said, “If the plea contains no title against the Crown, there must be judgment for the Crown. In civil actions, the plaintiff must recover upon his own title. In cases of informations in nature of *quo warranto* for usurpations upon the rights of the Crown, the defendant must shew that he has a good title against the Crown.” “The defendant is called upon to shew his title; to shew *quo warranto* he claims the franchise. He accordingly shews his title; the Crown are only to answer this particular claim; he must at once shew a complete title; if he fails in it, or any claim of it, judgment must be given against him. Here the defendant has set up a particular title; this title, upon which he grounds his claim to the franchise is found against him; he cannot now depart from it: therefore, the Crown is entitled to judgment.” (S. C.) So, where the defendant pleaded that he was duly elected and sworn mayor, &c., and issue being taken in the replication as to his being elected, and also as to his being sworn, and the jury upon the trial found that he was duly elected, but that he was not duly sworn, the court gave judgment of ouster against him. (*Rex v. Pender*, 1 Stra. 582, affirmed in Parliament, upon a writ of error; 2 Bro. P. C. 294, Tomline’s edit.; *Rex v. Clarke*, 2 East, 75; *Rex v. Hearle*, 1 Stra. 625; 11 Mod. 390.)

A large collection of pleadings in *quo warranto* will be found in 6 Went. Prec., and in 2 Gude’s Prac. But most of them are now rendered of little use by the stat. 5 & 6 Will. 4, c. 76, the first section of which enacts, “That so much of all laws, statutes and usages, and so much of all royal and other charters, grants, and letters-patent now in force relating to the several boroughs named in schedules (A.) and (B.) to this act annexed, or to the inhabitants thereof, or to the several bodies or reputed bodies corporate, named in the said schedules, or any of them, as are inconsistent with or contrary to the provisions of this act, shall be and the same are hereby repealed and annulled.” In corporate \*cases, therefore, it is neces- [\*214] sary to shew that the defendant being duly qualified, was elected or appointed pursuant to the provisions of the above act, and that he accordingly took upon himself the office by making the declaration required by sect. 50; without this, that he usurped the said office, &c. as alleged. (See forms of such Pleas in Appendix B., by a Mayor, No. 28; Alderman, No. 29; Councillor, Nos. 30, 31, and Burgess, No. 32.)

By 32 Geo. 3, c. 58, s. 2, the defendant may plead that he has exercised the office or franchise for six years before the exhibiting of the information; but such a plea can seldom be necessary, inasmuch as corporate offices do



not now continue for six years, and the application for the information must be made within twelve calendar months after the defendant was elected or became disqualified. (7 Will. 4 & 1 Vict. c. 78, s. 23.)

Where several pleas are to be pleaded, a rule for leave to plead several matters must be obtained upon application to the court or a judge, pursuant to the stat. 32 Geo. 3, c. 58. In every case, except where the defendant pleads guilty, the plea must be signed by counsel. But such signature is not copied on the record, &c.

The draft plea, as settled and signed by counsel, is handed to the defendant's clerk in court, who makes a fair copy thereof, and delivers it to the prosecutor's clerk in court. He also makes an office copy for the defendant. If it be term time a side-bar rule to reply within four days may then be entered by the defendant's clerk in court, and notice thereof given to the clerk in court for the prosecutor, and, if within that time there be no replication, a peremptory rule to reply within four days may be obtained upon a motion-paper for that purpose, signed by counsel (fee, 10s. 6d.) At the expiration of which rule, judgment may be signed for want of a replication, unless a replication be then filed, or further time to reply obtained upon application by summons to a judge at chambers. If the defendant's plea be filed in action, it is not necessary to give any rule to reply, but a formal notice to reply within four days should be indorsed on the [\*215] copy plea delivered to the prosecutor's clerk in court, and if no replication be filed or further time to reply obtained within four days after such delivery, the defendant may on the fifth day sign judgment for want of a replication. (1 Gude, 161.)

If the defendant before trial finds that his plea is erroneous or defective he may obtain leave to amend it upon terms, provided no delay be thereby created, (Rex v. Grimes, 4 Burr. 2147;) and that although the plea has been demurred to and a concilium moved for, (Rex v. Ellams, 7 Mod. 220; 2 Barnard. 440. 445, S. C.) Even after a demurrer to a plea has been argued, the court has permitted the plea to be amended. (Rex v. Birch, 4 T. R. 608; Rex v. Blackford, 4 Burr. 2147.)

6. *Replications, &c.*—The crown may demur to the plea, and is not bound in any case to demur specially, not being named in the statutes 4 & 5 Ann. c. 16 and 27 Eliz. c. 6, (Att.-Gen. v. Donaldson, 7 Mee. & Wel. 422; 9 Dowl. 319, S. C.) But where the information is not filed by the Attorney-General, ex officio, it would be safer for the relator to state his special causes of demurrer (if any.) See 9 Ann. c. 20, s. 7, which extends the provisions of the stat. 4 & 5 Ann. c. 16, to informations in the nature of a quo warranto, and the proceedings thereon. (See form of Demurrer, General or Special, Appendix B., No. 33.) No marginal note is necessary. (Ante, 207.) The proceedings upon a demurrer are as before stated. (Ante, 207.) It seems doubtful whether the Crown may not demur to the whole plea for its insufficiency, and also reply to it. (Rex v. Ginever, 6 T. R. 732; Id. 733, note.) After argument on demurrer, the court have permitted the plea to be amended. (Rex v. Birch, 4 T. R. 608; Rex v. Blackford, 4 Burr. 2147.)

Where the plea consists of several facts from which the defendant infers that he is entitled to the office, the replication may contain a denial of any

of the facts stated in the plea, but if it contain merely a denial of the inference \*drawn by the defendant from those facts, it will be bad, for [\*216] that amounts merely to a denial of the law; for the judges are to determine whether the inference drawn by the defendant is fairly drawn. In an information against the defendant for usurping the office of portreeve, the defendant shewed a title, and concluded his plea thus, "and so he says he did not usurp in manner and form as in the said information is alleged." The Coroner replied that he did usurp in manner and form, &c.: the replication was adjudged to be bad. (2 Selwyn's N. P. 1186, 9th edit., citing *R. v. Portreeve of Honiton*; S. C. nom. *The Queen v. Blagden*, Mod. 211; Id. 296, ante, 210.)

The prosecutor, as representing the Crown, has the right to traverse all or any of the material allegations contained in the plea by several distinct replications, and also to allege any new matter by way of avoidance of the title set out by the defendant, (see the forms, Appendix B., Nos. 35 and 36; *Rex v. Clarke*, 2 East, 75;) provided such new matter be consistent with that which is alleged in the plea, but not otherwise. To a quo warranto information against a burgess, the defendant pleaded a title to the office derived under a custom for the common council to admit ad libitum any person of the age of twenty-one whom they chose. The prosecutor, after denying that custom, also replied that no person was entitled to be admitted but in right of service, and that the defendant had not served a seven years' apprenticeship. Rejoinder, shewing the special circumstances under which he had served. On a demurrer to this rejoinder, because a departure from the plea, the court held the replication itself to be bad, as immaterial to the title in the plea, and gave judgment for the defendant. (*Rex v. Knight*, 4 T. R. 419.) In that case Buller, J., said, "The question before us is not so much whether the rejoinder be bad as whether the replication to which the rejoinder is an answer can be supported? and I think it cannot. The defendant in his plea, rested his title on a custom in the [\*217] corporation to admit any person at will; now if that custom as alleged be true in fact, it is perfectly \*immaterial whether any person may be admitted in right of servitude. Thus much is sufficient for the decision of this case. But I wish that the gentlemen of the bar who draw the pleadings in cases of this kind would attend in future to the mode of replying on the part of the Crown. A prosecutor in a quo warranto information is allowed to reply specially, and to put as many matters in issue as he pleases, but the new matter introduced in the replication ought to be consistent with the matter contained in the plea. If, for instance, a defendant set up a bad title under an old charter, when in fact a new charter had been granted, altering the old mode of election, the Crown may introduce the new charter in the replication, because it is consistent with the matter contained in the plea, but there is something to be superadded to that matter; but in this case the new matter alleged in the replication is not consistent with the defendant's plea. And if the plea be true, that which is stated in the replication is totally immaterial, and this practice, which is an abuse of the privileges of the Crown, ought to be checked, since, if permitted, it would be productive of great oppression on the subject." (And see *Rex v. Leigh*, 4 Burr. 2143.) The prosecutor may by his replication shew that the defendant at the time of his supposed election

was disqualified to be elected, (Reg. v. York, 2 Gale & D. 105;) and also that he was not duly elected, (Rex v. W. Smith, 2 M. & S. 583;) or that the defendant was not duly sworn in or otherwise lawfully admitted, (Mayor of Penryn's case, 1 Stra. 582; 2 Bro. P. C. 294, Tomline's edit.; Rex v. Clarke, 2 East, 75; Rex v. Courtenay, 9 East, 246;) or he may shew a former judgment of ouster obtained against the defendant after the election mentioned in his plea. (Rex v. Clarke, 2 East, 75.) In short he may (subject to the limitations after mentioned) traverse any material allegation or allegations contained in the plea, either directly and concluding to the country, or by a special traverse alleging new matter inconsistent with some material allegation in the plea, concluding with an *\*absque hoc* as [\*218] to such allegation; or he may reply by way of confession and avoidance, in which case the matter newly alleged must not be inconsistent with that pleaded by the defendant. (See the pleadings in Reg. v. Maddy, 11 Ad. & Ell. 878; Reg. v. Stanley, 11 Ad. & Ell. 882; Reg. v. Humphrey, 3 N. & P. 681; S. C., in error, 2 Per. & D. 691; 10 Ad. & Ell. 335; Rex v. Johnson, 5 Ad. & Ell. 466.)

By Reg. Gen. H. T. 7 & 8 Geo. 4, reciting that, "Whereas much vexation and expense have been occasioned to defendants in informations in the nature of quo warranto, by the practice of raising issues upon various matters distinct from the ground on which the information was granted by the court. Now for providing a remedy in this behalf, it is ordered that from henceforth the objection intended to be made to the title of the defendant shall be specified in the rule to show cause, and that *no objection not so specified shall be raised by the prosecutor on the pleadings*, without the special leave of the court, or of some judge thereof." (6 B. & C. 267; 9 D. & R. 247.) Before this rule, the court would not interfere to prevent the prosecutor from attacking the title of the defendant upon other grounds than those in respect whereof the information was granted. (Rex v. Brown, 4 T. R. 276.) But it would now seem, that if the prosecutor, without previous special leave of the court or a judge, attempt by his replication to question the defendant's title upon any other grounds than those specified in the rule for the information, the court or a judge upon application would set the replications aside for irregularity, or strike out those improperly pleaded, with costs to be paid by the relator. (See form of summons and order in such a case, Reg. v. Rowley, Appendix B., Nos. 38, 39.)

The draft replication, as settled and signed by counsel, is handed to the prosecutor's clerk in court, who makes a fair copy thereof and delivers it to the defendant's clerk in court. A rejoinder may then be compelled in the same way as a replication to a plea, viz. by a side-bar rule and *\*subsequent peremptory rule* in term time, or by a notice to rejoin in [\*219] vacation. (See ante, 214.) And so with respect to each subsequent pleading until both parties are completely at issue. The prosecutor's clerk in court usually adds a *similiter* for the defendant when his replication or subsequent pleading concludes to the country.

In Appendix B., Nos. 35 to 41, will be found forms of replications, rejoinders, sur-rejoinders, &c. (See Rex v. Hubball, 9 D. & R. 143; 6 B. & C. 139.)

7. *The Issue, Record, &c.*—Upon the pleadings being complete, the

clerk in court for the prosecutor, if so instructed, will make up the issue and deliver a fair copy thereof to the clerk in court for the defendant. He will also make an office copy for the relator or his solicitor. (See form of Issue, Appendix B., Nos. 44 & 45.) He will also, if so instructed, give a proper notice of trial, which is usually indorsed on the issue. Ten days' notice is sufficient for the assizes. (14 Geo. 2, c. 17, s. 1.) In London or Middlesex fourteen days' notice is necessary, unless the defendant resides within forty miles of London, in which case eight days' notice is sufficient. Less notice will of course do where the defendant is under terms to accept short notice of trial.

The record and jury process are prepared by the relator's clerk in court. (See the forms, Appendix B., Nos. 46, 47 & 48.) He will also obtain the Attorney-General's *warrant of nisi prius*. (See the form, Appendix B., No. 49.) He also gets the *venire facias* returned; but the *distringas* is usually returned at the assizes.

Either party may obtain a special jury. (6 Geo. 4, c. 50, s. 30; *Rex v. Ellams*, 2 Barnard. 402.) Such jury is nominated and appointed in precisely the same manner as upon a criminal information. (Ante, 89.) When a special jury is struck, each party should procure the Attorney-General's *warrant for a tales*. (See the form, Appendix B., No. 50.) This will be [\*220] granted as a matter of course to either party, except where the information is filed by the Attorney-General *ex officio*, in which case it is usually refused to the defendant. (2 Gude, 688.)

*Subpœnas ad testificandum* and *subpœnas duces tecum*, may be sued out by the clerks in court of either party. (See the forms, Appendix B., Nos. 51 & 52.) Also writs of *habeas corpus ad testificandum* when necessary.

The briefs are of course prepared by the solicitors of the respective parties.

If the defendant wish to employ Queen's counsel on his behalf, he must obtain her Majesty's license for that purpose as before directed. (Ante, 208.)

[\*221]

## \* CHAPTER VIII.

## OF THE EVIDENCE ON THE TRIAL OF INFORMATIONS IN THE NATURE OF QUO WARRANTO.

1. The *general rules* of evidence are the same in all cases, civil and criminal, and therefore of course apply to proceedings upon informations in the nature of quo warranto. For such rules, reference may be made to the works on evidence by Mr. Starkie, Mr. Phillipps, and Mr. Roscoe.

Upon the trial of an information in the nature of a quo warranto, the *onus probandi* generally lies upon the defendant; who must prove his title as

pleaded, or such part thereof as is traversed by the replication. And where the onus probandi on each issue lies on the defendant he must begin. But if the onus probandi on any issue lies on the prosecutor (as where the defendant pleads that he did not use or exercise the office; or where the prosecutor alleges in his replication new matter which is traversed by the defendant,) the prosecutor is entitled to begin.

Where the issue is whether the defendant was duly elected as a councillor for a borough, it seems that he may make out a *prima facie* case, by showing that at the conclusion of the election he was declared by the presiding officers to be duly elected according to the provisions of the act for regulating municipal corporations. (Reg. v. Ledgard, 8 Ad. & Ell. 535; 3 N. & P. 513, S. C.) In answer to which the prosecutor may cause the original voting papers deposited with the town-clerk of the borough to be produced, and upon *due proof of their identity*, (as to which see Reg. v. Ledgard, *supra*, particularly the judgment of Patteson, J.,) to read them in evidence, and then to shew that \*some of them were fraudulent or defective; that other voting papers delivered in at the election were [\*222] suppressed; that some of the voters whose papers were received and counted were not duly qualified as burgesses, nor entitled to be enrolled, or to vote as such; in other words a scrutiny may be entered into, the Burgess roll not being conclusive. (Reg. v. Quayle, 11 Ad. & Ell. 508; Reg. v. Grierson, T. T. 1842.) The defendant may then produce evidence in *reply* to contradict that offered in support of the prosecution; and it seems that he may not only shew that his votes were good ones and the voters duly qualified, but also that some of the voting papers for the opposing candidates were fraudulent or defective, and that some of their voters were disqualified, &c., for such evidence in effect contradicts that produced by the prosecutor, viz., the voting papers, shewing *prima facie* the number of legal votes for the other candidates. As a general rule, however, it is not allowable to produce as evidence in reply witnesses who merely strengthen and confirm the case originally proved; for all such evidence should be produced in the first instance. (Rex v. Hilditch, 5 C. & P. 299; Rex v. Stimpson, 2 C. & P. 415. But see Briggs v. Aynsworth, 2 Moo. & Rob. 108, which however is a case not to be relied on.)

Where the prosecutor shews that a number of candidates at an election of councillors equal to the number then to be chosen had a majority of legal votes over the defendant, and that no objection was made at the election to the qualification of such candidates or any of them, it is not necessary for the prosecutor to prove that the other candidates who had the majority of legal votes were *duly qualified to be elected as councillors* of the borough. (Reg. v. Ledgard, 8 Ad. & Ell. 535; 3 N. & P. 513, S. C.)

Before the Municipal Corporation Acts, an election held before a mayor *de facto* who was not also mayor *de jure* was void, and a traverse of the allegation that the presiding officer was mayor *put in issue his title as mayor*, and not the mere fact of his acting as such. (Rex v. Smith, 5 M. & S. 271; Rex v. The Corporation of Bridgewater, 3 Doug. 379.) \*But now see the 7 Will. 4 & 1 Vict. c. 71, s. 1, and 5 & 6 Will. 4, c. [\*223] 76, s. 53, ante, 145.

2. *Competency of Witnesses.*—The relator is an incompetent witness

for the Crown, being personally liable to the defendant for the costs of the proceedings, and so directly interested in the result.

Generally speaking, members of the same corporation are admissible as witnesses on either side, for although their title may stand on the same footing as that of the defendant, a verdict and judgment for or against him will not be evidence against them in any subsequent proceeding, unless indeed they derive their title through the defendant, in which case a judgment of ouster against him would be admissible in a subsequent prosecution against the witness. (*Rex v. Hebden*, 2 Stra. 1109; 2 Selwyn's N. P. 1187, 9th ed.) But such judgment would not be conclusive. (*Rex v. Grimes*, 5 Burr. 2598; 2 Selwyn's N. P. 1189.) Formerly where an election was had before a mayor or other officer, whose title was defective, the election was void. (*Rex v. Smith*, 5 M. & S. 271; *Rex v. The Corporation of Bridge-water*, 3 Doug. 379.) But this is remedied by the stat. 7 Will. 4 & 1 Vict. c. 78, s. 1; 5 & 6 Will. 4, c. 76, s. 53. Since those acts, it can seldom happen that a verdict and judgment against one person can affect the title of another, but even in such cases it seems that the name of the witness may be indorsed upon the record pursuant to the statute 3 & 4 Will. 4, c. 42, s. 26. (2 Selwyn's N. P. 1187.)

By 6 & 7 Will. 4, c. 104, s. 6, it is enacted, that no burgess of any borough named in the schedules to the act for regulating municipal corporations in England and Wales, shall be deemed an incompetent witness in any suit or proceeding at law or in equity, by reason of his being a member of such body corporate, or interested in the borough fund of any borough.]

3. *Documentary Evidence.*]—The statutes relating to municipal corporations being public acts, the court will take \*judicial notice of them, [\*224] and therefore production of a copy printed by the Queen's printer is sufficient. (*Phil. Ev.* 611, 8th ed.; *Rosc. Ev.* 73, 5th ed.)

The insertion of the name of a town in schedule (A) of the 5 & 6 Will. 4, c. 76, is *prima facie* evidence of the existence of a municipal corporation there, but may be rebutted by evidence that the name had been inserted in the act by mistake, as in the case of Gateshead. (*Rex v. Greene*, 6 Ad. & El. 548; 1 N. & P. 631.)

There are some clauses in the above act which are material with respect to *evidence* connected with proceedings in *quo warranto*.

Sect. 5 enacts, that "*the freeman's roll*" shall be made out and kept by the town clerk, who "shall keep a true copy of such roll to be perused by any person without payment of any fee, at all reasonable times, and shall deliver a copy thereof to any person requiring the same, on payment of a reasonable price for such copy;"—a copy of the freeman's roll so obtained would therefore be admissible in evidence. (*Phil. Ev.* 614, 8th ed.; *Rosc. Ev.* 75, 5th ed.; *Gilb. Ev.* 21.)

Sects. 15, 16, 17, 18, 19, provide for the making out, revising, and signing of "*The Burgess Lists*;" sect. 22 enacts, that the burgess lists so revised and signed as last aforesaid, shall be delivered by the mayor to the town clerk of such borough, who shall keep the same, and shall cause the said burgess lists to be fairly and truly copied into one general alphabetical list, in a book to be by him provided for that purpose, with every name therein numbered, beginning the numbers from the first name, and continu-

ing them in a regular series to the last name, and shall cause such books to be completed on or before the 22nd day of October in every year, and shall deliver such books, together with the lists, at the expiration of his office to the person succeeding him in such office; and every such book in which the said burgess lists shall have been copied shall be "*The Burgess Roll*" of the burgesses of such borough, entitled to vote, after the passing of this act, in the choice of the \*councillors, assessors and auditors of such borough as hereinafter mentioned, at any election which may take [\*225] place in such borough between the first day of November inclusive in the year wherein such burgess roll shall have been made, and the first day of November in the succeeding year, provided that no stamp duty shall be payable in respect of the admission, registry or enrolment of any burgess, according to the provisions of this act.

Sect. 45 enacts, that, for the purpose of better ascertaining who are the burgesses of any ward in a borough divided into wards, the burgess roll of every borough so divided into wards, shall thenceforward be made out by or under the direction of the town-clerk in alphabetical lists of the burgesses in each ward, to be called "*Ward Lists*."

Sect. 23 enacts, that the town clerk of any borough shall cause to be written or printed copies of the burgess roll in every year, and shall deliver such copies to all persons applying for the same, on payment of a reasonable price for each copy; a copy of the burgess roll so obtained would therefore be admissible in evidence. (Phil. Ev. 614, 8th ed.; Rosc. Ev. 75, 5th ed.; Gilb. Ev. 21.)

Sect. 35 enacts, that upon the election of councillors the mayor and assessors shall examine the voting papers delivered to them at such election, for the purpose of ascertaining the result of the election as therein mentioned. "And the mayor shall cause the *voting papers* to be kept in the office of the town clerk, during six calendar months at the least after every such election. And the town clerk shall permit any burgess to inspect the voting papers of any year on payment of one shilling for every search." Under this section the town-clerk is not compellable to allow two or more burgesses at one and the same time to inspect the voting papers so kept by him, or to give more than one of the voting papers to one person at the same time; but he is bound to allow any burgess who brings a list of his own to compare it with the papers produced by the town-clerk, and mark it according to what he finds there: in other words, the party inspecting may \*make [\*226] memoranda as to the contents of the voting papers. (Rex v. Arnold, 4 Ad. & Ell. 657; 6 N. & M. 152.) The original voting papers only can be given in evidence, and even they are not considered such public documents as prove themselves on production from the proper custody: where, therefore, such papers having been handed over by the mayor, to the town-clerk were by his clerk delivered over to the clerk of the succeeding town-clerk, who produced them at the trial, it was held that the former town-clerk also should have been called to prove that the papers transmitted by him were the same which he had received from the mayor. (Reg. v. Ledgard, 3 N. & P. 513; 8 Ad. & Ell. 535, S. C.) It was even doubted whether the mayor himself should not have been called to identify the papers as those which were received at the election. (S. C., per Patteson, J.)

Sect. 85 provides, that all the charters, deeds, muniments and records of

every borough or relating to the property thereof, shall be kept in such place as the council from time to time shall direct, and the town-clerk for the time being shall have the charge and custody of, and be responsible for the same.

Sect. 69 enacts, that minutes of the proceedings of all meetings of the council of any borough, shall be drawn up and fairly entered into a book to be kept for that purpose, and shall be signed by the mayor, alderman, or councillor presiding at such meeting, [and not afterwards. Reg. v. The Mayor and Town-Clerk of Evesham, 8 Ad. & Ell. 266; 3 N. & P. 351; but see contra, The Southampton Dock Company v. Richards, 1 Man. & Gr. 448; 1 Scott's N. R. 219; Miles v. Brough, 21 Law J., Q. B., 74;] and the said minutes shall be open to the inspection of any burgess at all reasonable times, on payment of a fee of one shilling. Sect. 93 enacts, that the treasurer of every borough shall, in books to be kept for that purpose, enter true accounts of all sums of money by him received and paid, and of the several matters for which such sums shall have been received and paid; and [\*227] the books containing the accounts shall, at all \*seasonable times, be open to the inspection of any of the aldermen or councillors of such borough; and by 7 Will. 4 & 1 Vict. c. 78, s. 22, it is enacted, that from and after the commencement of this act, any burgess of any borough shall be at liberty, at all seasonable times, to make any copy of or take any extract from the book required by the said act, to be kept for the purpose of entering the minutes of council, and also to make any copy or take any extract from any order in council of such borough for the payment of any money; and it shall also be lawful for any alderman or councillor of any borough, at all seasonable times, to make any copy of or take any extract from the book required by the said act to be kept by the treasurer of such borough.

4. *Corporation Books* are evidence by way of admission, between the members of a corporation, but not for the corporation against an individual member of it suing them. (Hill v. The Manchester and Salford Waterworks Company, 5 B. & Adol. 875.) The books of public corporations are allowed to be given in evidence when they have been publicly kept as such, and the entries made therein by the proper officer, (Rex v. Motherwell, 1 Stra. 93;) provided such entries are of a public nature but not otherwise. (Marriage v. Lawrence, 3 B. & A. 142.) "If a corporation enters their own private business in a Public Court Book, that circumstance will not alter *the nature of the entry*; for if the entry apply to private transactions alone, it will still fall within the rule applicable to private books, which cannot be given in evidence for the party to whom they belong." Per Bayley, J., 3 B. & A. 144, S. C.) And whenever a book is produced in evidence as a *public* document belonging to the corporation, it must be shown to have come from the proper custody. It has been held that books purporting to be the corporation books, produced from a chest found in the house of a former town-clerk after his death, and not from the corporation chest, could not be received. (Mercers of Shrewsbury v. Hart 1 C. & P. 114.) [\*228] \*When the entries in corporation books are admissible in evidence, as being of a public nature, they may be proved by *examined copies*. (Brocas v. The Mayor of London, 1 Stra. 308;) but the copy of a letter, fifty years old, found in the muniment chest of the corpo-



ration, (not being of a public nature), is not admissible in evidence. *Rex v. Gwyn*, 1 Stra. 401.) Where in order to prove the defendant a freeman, a copy upon stamped paper was produced of a loose paper upon a file, which the witness said was also on a stamp, and was kept with other similar stamped entries on a file among the corporation papers and it appeared there was also a book in which the acts of the corporation were kept, and where there was an entry more at large of the freeman's admission, made when he was originally admitted, but there was no stamp in the book, it was held that the loose paper being the only effectual act, and as having that which the law required, viz. the proper stamp, must be looked upon as the proper and original act of the corporation, and that a copy of that was good evidence. (Per Noel J., *Rex v. Head*, Peake's Ev. 92 a.)

5. *Inspection of Documents before the Trial.*—It may sometimes be important for the prosecutor, or for the defendant, to obtain *before the trial*, an inspection of, and a copy or extract from, documents in the possession of their corporation or their town-clerk. The proper course to be pursued in such cases is to make an application for that purpose to the town-clerk; and, if he improperly refuse an inspection, &c., then a mandamus may be applied for to compel him, (*Rex v. Arnold*, 4 Ad. & Ell. 657; 6 N. & M. 152;) or a rule may be obtained intitled in the cause or prosecution depending, which rule the court will enforce by attachment, (*Rex v. Babb*, 3 T. R. 579.)

We have already noticed the sections of the act relating to municipal corporations giving a right to inspect and take copies of, or extracts from the book containing the minutes of council, &c. (Ante, 227.) Independently of such acts the law is as follows:—Every member of a corporation \*has as such a right to inspect the books and documents belonging [\*229] to the corporation for any matter that concerns himself, although the corporation are not parties to the dispute which renders the inspection necessary. But the court will not, by mandamus or rule, compel the corporation or their town-clerk to produce all their books, &c.; but only such of them as appear to be necessary with reference to the particular matter in dispute. (*Rex v. The Fraternity of Hostmen in Newcastle-upon-Tyne*, 2 Stra. 1223; *Rex v. Babb*, 3 T. R. 579.) Strangers to the corporation have no right to any inspection whatever. Therefore pending an action by a corporation against a stranger for tolls, the court will not, at the instance of the defendant, grant leave to inspect the corporation books, papers, writings, and orders of council touching the matter in question, and take copies thereof, paying a reasonable sum for the same. (*The Mayor &c. of Southampton v. Graves*, 8 T. R. 590.) But where a corporation has the power of making bye-laws, affecting not only the members of the corporation but the inhabitants of the borough generally, the court will compel such corporation, in an action by their treasurer against an inhabitant for breach of such bye-law, to allow the defendant to inspect the corporation books, so far as respects the bye-law, stated in the declaration; for though the defendant was not a member of the corporation, yet being one of a class of persons affected by the bye-law, he was not to be regarded as a mere stranger, and was entitled to demand inspection. (*Harrison v. Williams*, 3 B. & C. 162.)

A corporation will not be compelled to produce their books &c. at the

instance of a member, if it appears that the entries contained therein relating to the subject matter in dispute would furnish evidence against them on a criminal prosecution. (*Rex v. Dr. Purnell*, 1 Wils. 239; 1 Blac. R. 37, S. C.) On an information in the nature of a *quo warranto* information against the defendant for executing the office of one of the surveyors of highways at Aylesbury (such surveyors being incorporated by act of Parliament,) [\*230] without having taken the oaths required by 25 Car. 2, c. 2; the court refused a rule on the defendant that the prosecutor might have two books produced, which these surveyors kept, in which they entered their elections, and also their receipts and disbursements, and that he might take copies of what he thought necessary, and that the books might be produced at the next assizes at the trial; saying that they were perfectly of a private nature, and it would be to make a man to produce evidence against himself in a criminal prosecution.

Sometimes the court will specially order the *production of an original document at the trial*; but where the things are evidence of themselves, as corporation books containing entries of a public nature, the court will make no rule for production of the originals at the trial, but only that the party have copies, which copies are evidence, (*Rex v. Smith*, 1 Stra. 126;) unless indeed there be rasure or a new entry, or it be necessary to prove the party's handwriting to the original, or there be some other special reason rendering it necessary to produce the original itself. "We never order the original to be produced where the copy is evidence, without such a particular foundation as has been mentioned." (Per Pratt, C. J., in *Brocas v. The Mayor and Aldermen of London*, 1 Stra. 307.)

*Variances* between the record and the evidence in support thereof, may frequently be cured at the trial by amendments, made pursuant to 9 Geo. 4, c. 15, and 3 & 4 Will. 4, c. 42, s. 23. (See post 231 to 234.)

[\*231]

## \*CHAPTER IX.

OF THE TRIAL AND SUBSEQUENT PROCEEDINGS—AMENDMENTS AT NISI PRIUS; 9 GEO. 4, c. 15; 3 & 4 WILL. 4, c. 42, s. 23—THE VERDICT—MOTION FOR NEW TRIAL—JUDGMENT—COSTS.

THE record and jury process, with panels annexed, are lodged with the judge's marshal or associate, and the case entered for trial at the assizes as in common actions. The trial takes place on the *civil* side of the court, and is conducted in the same manner as other cases.

Queen's counsel cannot appear for the defendant without a special license from the Crown. (Ante, 208.)

If the case is to be tried by a special jury, and a full special jury does not appear, neither party can *pray a tales* without the attorney-General's warrant for that purpose, which, however, is usually procured on both sides. (Ante, 219.) The judge may certify for the costs of the special jury, under 6 Geo. 4, c. 50, ss. 30. 34. (*Reg. v. The Inhabitants of Pembridge*, 21 Law J., Q. B., 47.)

As to the evidence, see ante, Chap. VIII. Either party may tender a bill of exceptions. (*Rex v. Higgins*, 1 Vent. 366 ; see the form, Appendix B., No. 57.) This is sometimes expedient on behalf of the defendant where the court above has decided the point in question against him upon the application for the rule for the information.

*Amendments at the Trial.*]—By 9 Geo. 4, c. 15, intituled, “An Act to prevent a Failure of Justice by reason of Variances between Records and Writings produced in Evidence in support thereof,” after reciting that, “Whereas great expense is often incurred, and delay or failure of \*justice takes place at trials by reason of variances between writings [\*232] produced in evidence and the recital or setting forth thereof upon the record on which the trial is had, in matters not material to the merits of the case, and such record cannot now in any case be amended at the trial, and in some cases cannot be amended at any time ;” it is enacted, “That it shall and may be lawful for every court of record holding plea in civil actions, any judge sitting at Nisi Prius, and any court of oyer and terminer and general gaol delivery in England, Wales, the town of Berwick-upon-Tweed, and Ireland, if such judge or court shall see fit so to do, to cause the record on which any trial may be pending before any such judge or court in any civil action, or in any indictment or *information for any misdemeanor*, when any variance shall appear between any matter in writing or in print produced in evidence, and the recital or setting forth thereof upon the record whereon the trial is pending, to be forthwith amended in such particular by some officer of the court, on payment of such costs (if any) to the other party as such judge or court shall think reasonable ; and thereupon the trial shall proceed as if no such variance had appeared ; and in case such trial shall be had at Nisi Prius, the order for the amendment shall be indorsed on the postea and returned together with the record, and thereupon the papers, rolls, and other records of the court from which such record issued, shall be amended accordingly.”

By 3 & 4 Will. 4, c. 42, intituled “An Act for the further Amendment of the Law and the better Advancement of Justice,” after reciting (sect. 23) that, “Whereas great expense is often incurred, and delay and failure of justice takes place at trials by reason of variances as to some particular or particulars between the proof and the record or setting forth on the record or document on which the trial is had, of contracts, customs, prescriptions, names and other matters or circumstances not material to the merits of the case, and by the mis-statement of which the opposite party cannot have been prejudiced, and the same cannot in any \*case be amended at the trial except where the variance is between any matter in writ- [\*233] ting or in print produced in evidence and the record ; and that it is expedient to allow such amendments as are hereinafter mentioned to be made on the trial of the cause ;” it is therefore enacted, (sect. 23,) “That it shall be lawful for any court of record, holding plea in civil actions, and any judge sitting at Nisi Prius, if such court or judge shall see fit so to do, to cause the record, writ, or document on which any trial may be pending before any such court or judge in any civil action, or in *any information in the nature of a quo warranto*, or proceedings on a mandamus, when any variance shall appear between the proof and the recital or setting forth on

the record, writ, or document on which the trial is proceeding, of any contract, custom, prescription, name, or other matter in any particular or particulars, in the judgment of such court or judge, not material to the merits of the case, and by which the opposite party cannot have been prejudiced in the conduct of his action, prosecution, or defence, to be forthwith amended by some officer of the court or otherwise, both in the part of the pleadings where such variance occurs, and in every other part of the pleadings which it may become necessary to amend, on such terms as to payment of costs to the other party, or postponing the trial to be had before the same or another judge, or both payment of costs and postponement, as such court or judge shall think reasonable; in and case such variance shall be in some particular or particulars in the judgment of such court or judge not material to the merits of the case, but such as that the opposite party may have been prejudiced thereby in the conduct of his action, prosecution, or defence, then such court or judge shall have power to cause the same to be amended upon payment of costs to the other party, and withdrawing the record or postponing the trial as aforesaid, as such court or judge shall think reasonable; and after any such amendment the trial shall proceed, in case the same shall be proceeded with, in the same manner in all respects, both with respect to the liability of witnesses

[\*234] \*to be indicted for perjury and otherwise, as if no such variance had appeared; and in case such trial shall be had as *Nisi Prius* or by virtue of such writ as aforesaid, the order for the amendment shall be indorsed on the *postea* or the writ as the case may be, and returned together with the record or writ, and thereupon such papers, rolls, or other records of the court from which such record or writ issued as it may be necessary to amend shall be amended accordingly; and in case the trial shall be had in any court of record, then the order for amendment shall be entered on the roll or other document upon which the trial shall be had: provided that it shall be lawful for any party who is dissatisfied with the decision of such judge at *Nisi Prius*, sheriff, or other officer, respecting his allowance of any such amendment, to apply to the court from which such record or writ issued for a new trial upon that ground, and in case any such court shall think such amendment improper, a new trial shall be granted accordingly on such terms as the court shall think fit, or the court shall make such other order as to them may seem meet." Section 24 enacts, "That the said court or judge shall and may if they or he think fit, in all such cases of variance, instead of causing the record or document to be amended as aforesaid, direct the jury to find the fact or facts according to the evidence, and thereupon such finding shall be stated on such record or document; and notwithstanding the finding on the issue joined, the said court or the court from which the record has issued shall, if they think the said variance immaterial to the merits of the case, and the misstatement such as could not have prejudiced the opposite party in the conduct of the action or defence, give judgment according to the very right and justice of the case."

*Verdict.*—The jury may give a general verdict for the Crown or for the defendant; or they may find on some of the issues for the Crown and on others for the defendant, according to the evidence. If by the finding upon any one issue the others become immaterial, the judge may even, without [\*235] \*consent of the parties, discharge the jury from giving any verdict upon such immaterial issues. (*Rex v. Johnson*, 5 Ad. & Ell. 488.)

The judge's associate makes the usual minute of the verdict, and afterwards he draws up and engrosses the *postea*. (See the form, Appendix B., No. 55.)

Sometimes the jury give a special verdict, which is afterwards formally drawn up and settled by counsel on both sides, the judge if necessary deciding when counsel differ. The *postea* is then drawn up by the associate, embodying such special verdict. (See the form, Appendix B., No. 56. *Rex v. Hawkins*, 10 East, 211.)

On the first day of the ensuing term a four-day rule for judgment may be given; this is entered with the Clerk of the Rules in the Crown Office. Before the expiration of such rule a new trial may be moved for, (*Rex v. Armstrong*, 2 Stra. 1102,) whether the verdict was for the Crown, (*Rex v. Malden*, 4 Burr. 2135; *Rex v. Robins*, H. T. 10 Geo. 2, cited 6 T. R. 626,) or for the defendant. (*Rex v. Francis*, 2 T. R. 484.)

The prosecutor may move for judgment *non obstante veredicto* where the defendant's plea confesses an user of the office without shewing a sufficient title in substance. On the other hand the defendant may move in arrest of judgment, if the information, replication, or other subsequent pleading on the part of the Crown be insufficient in substance. Either party may move for a *venire de novo* if the verdict be so defective that no judgment can properly be given upon it. But generally speaking, applications of the above nature must be made before final judgment has been signed, (*Rex v. Armstrong*, 2 Stra. 1102,) otherwise the only remedy is by a writ of error.

A judgment for the Crown upon a writ of *quo warranto*, or upon an information in the nature of a *quo warranto* exhibited by the Attorney-General *ex officio*, is, that the franchise be taken into the hands of our Lady the Queen, or that the defendant be ousted (according to the nature of the office or franchise,) and that he be taken to satisfy our said Lady the Queen for his usurpation. \*(Comyn's Digest, tit. Quo Warranto, [\*236] C. 5.) But no costs can be awarded against the defendant, as the Crown neither receives nor pays costs. The defendant may however be *fined* for his usurpation, according to the discretion of the court. When the information is filed at the instance of a relator, under the stat. 9 Ann. c. 20, the fine is merely nominal, (3 Blac. Com. c. 17,) and is included in the taxed costs. But in other cases a *capias pro fine* may issue. (See the form, Appendix B., No. 60.)

By 9 Ann. c. 20, s. 5, it is enacted and declared, "That in case any person, against whom any information in the nature of a *quo warranto* shall, in any of the said cases, *i. e.* corporate cases, (ante, 122,) be exhibited in any of the said courts, shall be found or adjudged guilty of an usurpation or intrusion into, or unlawfully holding and executing any of the said offices or franchises, (*i. e.* corporate offices or franchises of a corporate nature in corporate places, ante, 122,) it shall and may be lawful to and for the said courts respectively as well to give *judgment of ouster* against such person of and from any of the said offices or franchises, as to *fine* such person for his usurping, intruding into, or unlawfully holding and executing any of the said offices or franchises; and also it shall and may be lawful to and for the said courts respectively to give judgment that the relator or relators in such information named shall *recover his or their costs* of such prosecution;

and if judgment shall be given for the defendant or defendants in such information, he or they, for whom such judgment shall be given, shall recover his or their costs therein expended against such relator or relators, such costs to be levied in manner aforesaid."

Judgments given in pursuance of the above statute, whether by default, or upon a disclaimer, or upon demurrer, or after verdict, are to the following effect :

### 1. *Judgment for the Crown.*

"It is considered and adjudged by the said court here, that he the said J. S. do not in any manner intermeddle \*with or concern himself in or [\*237] about the office, liberties, privileges, and franchises aforesaid, but that he be absolutely forejudged and excluded from ever exercising or using the same or any of them, for the future ; and that he the said J. S., in order to satisfy our said present Sovereign Lady the Queen, for and on account of the usurpation aforesaid, be taken and so forth ; and that the said E. F., the relator above-mentioned in this behalf, do recover against the said J. S. the sum of , for his costs by him laid out and expended in carrying on his suit in this behalf, according to the form of the statute in such case made and provided."

### 2. *Judgment for the Defendant.*

"It is considered that the said office, liberties, privileges, and franchises, so claimed by him the said J. S. as aforesaid, be allowed and adjudged to him ; and that he the said J. S. be dismissed and discharged by the said court here of and from the premises above charged upon him, and that he the said J. S. do depart hence without day in this behalf ; and also that he the said J. S. recover against the said E. F., the relator above named in this behalf, the sum of , for his costs by him laid out and expended in defending his suit in this behalf, according to the form of the statute in such case made and provided."

A judgment of ouster, &c., as above, cannot be given by the common law, (Rex v. Ponsonby and Others, Sayer's R. 245 ; 2 Selwyn's N. P. 1167, 9th edit. ; Buller's N. P. 207 ; ) nor can the defendant be made to pay the relator's costs, except in cases falling within the stat. 9 Ann. c. 20, (ante, 122 ; Rex v. Williams, 1 Burr. 402 ; 1 Blac. R. 93, S. C. ; Rex v. Wallis, 5 T. R. 375 ; Id. 379 ; Rex v. McKay, 5 B. & C. 640 ; 8 D. & R. 393, S. C. ; ) nor can the defendant, if successful, have judgment against the relator for his costs in cases not falling within the same statute, (Rex v. Hall, 1 B. & C. 237 ; 2 D. & R. 341, S. C. ; ) although he may be entitled to costs to the extent of £20, under the recognizance \*entered [\*238] into by the prosecutor pursuant to the stat. 4 & 5 Will. & M. c. 18, s. 2. (Rex v. Filewood, 2 T. R. 145.)

"The Court of King's Bench, in giving judgment for the relator in an information in the nature of a quo warranto under the statute 9 Ann. c. 20, is bound to give judgment that the relator shall recover his costs of such

prosecution;" (answer of all the judges, in the House of Lords, to the first question put to them in *Rex v. Amery*, 1 Anstr. 178; Id. 183;) and where any one of several issues in a quo warranto is found for the prosecutor on which judgment of ouster is given, he is entitled to costs on all the issues. (*Rex v. Downes*, 1 T. R. 453.) If, however, a judgment be entered without mention of costs where it should be with costs, it cannot be altered in a subsequent term. (*Rex v. Amery*, 1 Anstr. 178; Id. 183.) In one case, under special circumstances, the court allowed a disclaimer to be entered by the defendant without costs. (*Rex v. Holt*, 2 Chit. R. 366.)

Where the defendant confesses an usurpation for part of the time only, and as to the residue shews a good election, &c., there can be no judgment of ouster, but merely *capiatur pro fine* for the usurpation confessed. (*Rex v. Biddle and Another*, 2 Stra. 952; *Rex v. Taylor*, 2 Barnard. 238. 260. 316. 320.) But where the defendant pleads that he was duly elected and sworn in, and upon traverses of those allegations respectively the jury find that he was duly elected but that he was not duly sworn in, the judgment against him must be of *ouster generally, with costs*, for one link of the chain of his title is defective. Until duly sworn in, or otherwise lawfully admitted, he has no valid right and *title to exercise the office*, and his doing so amounts to an unlawful holding and executing of the office within the 9 Ann. c. 20. (Mayor of Penryn's case, 1 Stra. 582, affirmed in Parliament; 2 Bro. P. C. 294, Tomline's ed.; *Rex v. Reek*, 2 Ld. Raym. 1447; *Rex v. Clarke*, 2 East, 75.) There appears to be no instance whatever to be found in the Crown Office of a judgment of *ouster quousque, &c.* (*Rex v. Courtenay*, 9 East, 246; Id. 267.) After judgment of \*ouster once pronounced against the defendant under the above circumstances he [\*239] cannot make a good title without a fresh election. (*Rex v. Clarke*, 2 East, 75; *Rex v. Hearle*, 1 Stra. 625; 11 Mod. 390.) In Appendix B. will be found forms of judgments as follows:—For the Crown after verdict upon one or more issues, (No. 58;) for the defendant after verdict in his favour on all the issues, (No. 59;) for the Crown upon demurrer to the defendant's plea, (No. 33;) for the defendant upon demurrer to his plea, (No. 34;) for the Crown where the defendant suffers judgment by default, (No. 21;) or disclaims, (No. 23;) or demurs to the information, (No. 24.)

The relator's costs are taxed by the Master of the Crown Office. The clerks in courts and solicitor's on both sides usually attend and an affidavit of increase is made as in civil actions, intitled "In the Queen's Bench—The Queen against J. S., upon an Information in the nature of a Quo Warranto." When the Master's allocatur has been obtained and final judgment signed, a *fi. fa.*, *ca. sa.*, or *elegit* may be issued against the defendant for the amount of the taxed costs. (See the forms, Appendix B., Nos. 61, 62.) If the relator die before the costs are levied (and in some other cases) a *scire facias* may become necessary, (See the form of a *scire facias* by the relator's administrator, with subsequent *fi. fa.* thereon, Appendix B. Nos. 64, 65.)

Where the defendant succeeds, and obtains judgment for costs against the relator, such costs are taxed, and payment thereof enforced as above. (See the form of *fi. fa.* or *ca. sa.* against the relator for the defendant's costs, Appendix B., No. 63.)

If the information relate to a corporate office or franchise, and the relator

does not proceed to trial *pursuant to notice*, it is within the equity of the stat. 9 Ann. c. 20, that he should pay costs for not proceeding to trial pursuant to his notice. (Anon., Sayer's R. 130.) "By the constant course of the court, the defendants are entitled to costs if the prosecutor give notice of trial, and neither goes to trial nor countermands it in time; and [\*240] no instance can be produced \*that I know of to the contrary." (Per Lord Mansfield, C. J., in *Rex v. Heydon and Other*, 3 Burr. 1304.) "In the case of the king there can be no laches, but a subject in these prosecutions shall pay costs as in common actions. Executors and administrators pay costs for not going to trial." (Per Cur. in *Rex v. Powell*, 1 Stra. 33; and see *Rex v. James*, Cases temp. Hardwicke, 159.)

The distinction seems to be this, that if the prosecutor give notice of trial, and do not proceed to trial accordingly, nor countermand in due time, he must pay the usual *costs of the day*, as in other cases. But if he omit to proceed to trial for one whole year next after issue joined, he is liable to pay the defendant his costs to the extent of 20*l.*, under his recognizance taken pursuant to the stat. 4 & 5 Will. & M. c. 18. (*Rex v. Morgan*, 2 Stra. 1042; *Rex v. Howell*, Cases temp. Hardwicke, 247; *Rex v. Filewood*, 2 T. R. 145.)

[\*241]

## CHAPTER X.

## MISCELLANEOUS POINTS RELATING TO INFORMATION IN THE NATURE OF QUO WARRANTO.

It is no objection to a quo warranto, that it is a friendly proceeding in order that the party may disclaim. (*Rex v. Marshall*, 2 Chit. Rep. 370.) But if the relator and the defendant employ the same attorney, and the information be not filed merely to enable the defendant to disclaim, but to try the defendant's title, the court will upon application, order that a third person duly qualified to be the relator, shall have the conduct and management of the proceedings on behalf of the Crown; and that although there be no collusion between the parties, and the attorney intend *bonâ fide* to obtain the judgment of the court. (*Reg. v. Alderson*, 11 Ad. & Ell. 3; 3 Per. & D. 2, S. C.) The court have also permitted a third person interested in the defendant's title to defend the proceedings on his behalf, where he was unwilling to incur the risk and expense. (*Rex v. Marshall*, 2 Chit. R. 370.)

When a proper case has been laid before the court to induce them to grant an information in the nature of a quo warranto, they seldom, if ever, exercise any control over it afterwards as to the manner in which it is to be conducted. (*Rex v. Brown*, 4 T. R. 276.) After the rule has been made absolute the court will not stay proceedings until the prosecutor give security for costs, on the ground that the relator is in insolvent circumstances, where it appears that he is a corporator, and no fraud is suggested. (*Rex v. Wynne*, 2 M. & S. 346.) But security for costs will sometimes be



ordered *at the time the rule is made absolute*, if the relator is a pauper and fraudulently colludes \*with a stranger. (Rex v. Wakelin, 1 B. & Adol. 50.) So where the relators do not act *bonâ fide*. (Rex v. [\*242] Dudley, 7 Dowl. 700.)

A quo warranto information cannot be quashed on motion, though both parties consent. (Rex v. Edgar and Rex v. Bricknell, 4 Burr. 2135.) It may generally be amended. (Ante, 207.)

Either party, if dissatisfied with the judgment of the Court of Queen's Bench, may bring a writ of error for matter appearing on the face of the record. (Reg. v. Johnson, 5 Ad. & Ell. 488.) In Reg. v. Humphrey, (10 Ad. & Ell. 335; 3 Per. & D. 691,) the defendant succeeded in reversing a judgment pronounced against him.

Generally speaking, the costs of proceedings in quo warranto cannot lawfully be defrayed out of the borough fund. (Reg. v. The Mayor, &c. of Bridgewater, 10 Ad. & Ell. 281; 2 Per. & D. 558.) But it seems that a municipal corporation is justified in discharging, out of the corporation funds, the expenses of opposing quo warranto informations against individual members of the corporation before the act passed, if the object of such informations was to impeach the title, or destroy the legal existence of the corporation as a body. (Attorney-General v. The Mayor, &c. of Norwich, 2 Myl. & Cr. 406; Holdsworth v. The Mayor, &c. of Clifton Dartmouth Hardness, 11 Ad. & Ell. 490; 3 P. & D. 308.)

**Part II., of Cole on Criminal Informations, containing the Forms of the Pleadings and Proceedings, will be given in the next Number of the Law Library, and may, when preferred, be bound in the present volume.**

**COLE**  
**ON**  
**CRIMINAL INFORMATIONS,**  
**AND**  
**QUO WARRANTO.**  
**PART II.**  
**CONTAINING**  
**FORMS OF THE PLEADINGS AND PROCEEDINGS.**

**JULY, 1847.—1**



# APPENDIX A.

## CRIMINAL INFORMATION.

### FORMS.

#### No. 1.

Notice to a Magistrate of an intended Application for a Criminal Information.

TAKE NOTICE, That her Majesty's Court of Queen's Bench at Westminster will be moved on the [*first, (a)*] day of the next term, or so soon after as counsel can be heard, for a rule to shew cause why an information should not be exhibited against you for certain misdemeanors, in unlawfully, wickedly, corruptly, and contrary to your duty as one of her Majesty's justices of the peace acting in and for the county of —, [*here specify the offence as clearly and concisely as possible; ex. gr.—*“Convicting one E. F., on or about the — day of — last, of having, by means of his servants, cut, spoiled, and carried away from an estate called W., in the parish of M., in the said county, certain timber tops and bark, and ordered by you to pay unto J. H., alleged to have been the owner of the said timber tops and bark, the sum of —, you, the said J. S., before and at the time of making such conviction, refusing to hear \*the witnesses ready to be produced before you on the part of the said E. F., and well [\*244] knowing that the timber tops and bark, at the time the same were stated to have been cut and carried away, were the property of the said E. F., and that he had a legal right and title thereto; and for other misdemeanors unlawfully and corruptly committed by you as such justice of the peace as aforesaid, touching the said conviction of the said E. F.”] Dated this — day of —, 18—.

Yours, &c.

J. C., of —,  
Solicitor for the said E. F.

To J. S., Esq., a justice of the peace  
of our Lady the Queen, in and for  
the county of —.

(a) The notice must be served at least six days before the day specified. (Ex parte Fentiman, 4 N. & M. 126; 2 Ad. & Ell. 127, S. C.) No notice is necessary except upon applications against magistrates and other public officers.

## No. 2.

Notice to several Magistrates of an intended Application for a Criminal Information against them.

TAKE NOTICE, That her Majesty's Court of Queen's Bench at Westminster will be moved on (a) —, the — day of — instant, or so soon after as counsel can be heard, for a rule to show cause why an information or informations should not be exhibited against you for certain misdemeanors, in unlawfully, wickedly, corruptly, and contrary to your duty as justices of the peace acting in and for the county of —: [*here specify the offence as clearly and concisely as possible; ex. gr.*—"Convicting one E. F., on or about the — day of — last, of keeping and using, at the parish of —, in the county of —, one spaniel dog and one greyhound, and also one gun, to kill and destroy the game, and with the said gun, at the parish and county aforesaid, shooting at and killing one hare, you the said justices and every of you, at the time of making the said conviction, well knowing that the said E. F. was authorized by the laws of this realm not only to keep such dogs and gun, but also to take, kill, and destroy the game at the time and place mentioned in such conviction, and for other [\*245] misdemeanors committed by you as such justices of the \*peace as aforesaid, touching the said conviction of the said E. F." Dated this — day of —, 18—.

Yours, &c.

J. C., of —,  
Solicitor for the said E. F.

To J. S., Esq., G. H., Esq., the Rev.  
A. B., clerk, and the Rev. C. D.,  
clerk, four of the justices of the  
peace of our Lady the Queen, in and  
for the county of —.

## No. 3.

Affidavit of Service of Notice of Application against a Magistrate.

In the Queen's Bench.

J. C., of &c., [gentleman,] maketh oath and saith, That he did on —, the — day of — instant, [*or last past,*] *personally* serve J. S. Esq., one of her Majesty's justices of the peace for the county of —, with a notice, of which a true copy is hereunto annexed: [*if the service was not personal omit the word "personally," and go on thus:*—"by delivering such notice to and leaving the same with a female servant, [*or the wife, or the son, &c., as the case may be,*] of the said J. S., at his dwelling-house situate at —.

J. C.

Sworn at, &c.

(a) See note to Form, No. 1.

## No. 4.

**Affidavits for a Criminal Information for a Libel in the "Sunday Times," on a Police Magistrate.(c)**

**In the Queen's Bench.**

W. G., of &c., Esquire, maketh oath and saith, That he was appointed a police magistrate on or about the 21st day of October, 1834, when Viscount Melbourne was First Lord of the Treasury and Viscount Duncannon Home Secretary : that he acted as such police magistrate at the police court at Worship street, in the parish of St. Leonard, Shoreditch, \*in the county of, [\*246] Middlesix, from that time for six years or thereabouts, and that he has acted as such police magistrate for the district of Greenwich and Woolwich in the county of Kent, in conjunction with Henry Jeremy, Esquire, from the 19th day of October, 1840, down to the present time : and this deponent saith, that on the evening of Sunday, the 21st day of November, 1841, this deponent was informed that in the Sunday Times newspaper of that day there was a paragraph reflecting on the character of this deponent ; and this deponent saith, that his attention was then for the first time drawn to the said paragraph ; and this deponent saith, that on Monday, the 22nd day of November, 1841, this deponent read the said paragraph, and on the following morning this deponent saw his solicitor and counsel on the subject, when this deponent was advised to apply to this honourable court for leave to file a criminal information against the persons legally and properly responsible for the said newspaper, but that there was not sufficient time during the remainder of the then Michaelmas term to prepare the necessary affidavits to support such an application ; and this deponent saith, that on the said 22nd day of November, 1841, this deponent saw the words "Heartless conduct of Mr. G——, the magistrate," printed in large letters on a paper outside the window of the office of the said newspaper in Fleet street, in the city of London, the said paper being intended shortly to point out to the public what were the leading articles in the then last Sunday's newspaper, and which words referred as this deponent believes to the paragraph next hereinafter referred to ; and this deponent saith, that he hath inspected a copy of the Sunday Times newspaper of the said 21st day of November, 1841, and which contains the paragraph hereinbefore alluded to ; and this deponent saith, that the said paragraph contains a wicked and magignant libel on the character of this deponent, and was published as this deponent believes from corrupt motives, and for the purpose of injuring this deponent in his official capacity in the estimation of the public ; and this deponent saith, that the said paragraph is headed with the words "Mr. G——, the magistrate," printed in large letters, and referring to this deponent ; and this deponent saith, that the said paragraph commences, as follows, that is to say—'There are some men who appear to despise public opinion, who court rather than avoid the censure of the just and good, and exhibit a reckless contempt for the popular indignation which

(c) See note at the end of this precedent.

their actions never fail to create. Conduct like this could only be ascribed to folly or madness, did we not know that there are \*many individuals who thirst for notoriety, but being by nature incapable of rising to eminence by good or noble means, they adopt a contrary course, and like the obscure rascal who fired the temple of Diana, at Ephesus resolve to make themselves known to the world by their evil deeds. It is extraordinary to what lengths his craving for fame will carry some men. It was this morbid appetite which actuated almost all the villains who have perpetrated what are termed remarkable crimes in every age and country. But while some in the pursuit of notoriety aim boldly, like Fieschi, at the assassination of a king, or like Guy Fawkes attempt the destruction of a House of Parliament; others, more cautious, confine themselves within the magic circle of the law, and endeavour by a meaner and safer path to attain the object of their desires. We have seen in a recent instance the complacency with which a certain military despot received the storm of execration which was justly poured upon him by the press and the public voice, but we could scarcely fancy any one so greedy of general censure, so utterly regardless of the condemnation of the world, as Mr. G., the Greenwich police-magistrate." And this deponent saith, that in the said newspaper, immediately after the passage hereinbefore set out, is the following, that is to say; "Before the indignation excited by his brutal libel against the people of Ireland, and his unfeeling conduct towards the young man Murphy, has had time to subside in the public mind, he follows up his delinquency by an act so startling to humanity, so repugnant to every feeling of our nature, that were it not authenticated by the strongest and most incontrovertible evidence, we should hesitate in giving credence to it. The facts of the case, as they appeared in the daily journals, are shortly as follow; Mr. Graham, an inhabitant of Woolwich, and a highly respectable man, had an order of ejectment served upon him by a Mr. Longer, an officer in the Royal Dock Yard. In consequence of the state of his wife's health Mr. Graham applied to Mr. G——, the presiding magistrate, for an extension of the order of ejectment; pleading that it would be highly dangerous to attempt the removal of his wife in her then critical situation, being very near her accouchement. In this fact he was supported by the sworn testimony of a medical gentleman named M'Donald, who stated that it was his opinion it would be extremely unsafe to remove Mrs. Graham at that time, and that he should strongly oppose such a proceeding. Any person possessed of a single spark of human \*feeling would not hesitate a [\*248] moment in giving the required extension; but how shall we write the disgusting fact! that man! that magistrate! had the barbarity to order Superintendent Mallalieu to proceed directly and see the warrant of ejectment carried into effect, adding tauntingly (we quote his own words) 'Officer, it has not gone four o'clock yet, and there is plenty of time to execute the order; go and see it done accordingly, and return and let me know that it has been done. I thought at first it was a trumpety excuse to keep possession.' Mr. M'Donald, who has been for several years a highly respectable practitioner in the town, protested distinctly against the disregard with which the magistrate had treated his representation, and the agonised husband remonstrated in the most earnest language against the forcible removal of his wife, which he said he felt assured would be attended with the worst



results. In despite of these powerful appeals, the savage decree was carried into execution to the very letter; the unfortunate woman was, without scarcely a moment of preparation, hurried by the rude myrmidons of justice—we should say of law—into the streets, and that at a time when woman demands our tenderest cares and sympathies.” And this deponent saith, that this passage refers as this deponent believes, to a case first brought before this deponent on the 8th day of October, 1841, when one William Graham appeared before this deponent on a notice from his landlord, one James Longer, under the provisions of the Recovery of Tenements Act, passed in the session of Parliament held in the first and second years of the reign of her present Majesty, chapter seventy-four, to shew cause why he should not give up possession of a tenement, consisting of two rooms in Charles Street, Woolwich; and this deponent saith, that upon the hearing of the case and the requisite proofs having been put in, the said William Graham was called upon to state whether he had any thing to urge why a warrant should not be issued in compliance with the act, when he objected on the ground of his wife being near her confinement, and said he could not procure another lodging; and this deponent saith, that he thereupon informed the said William Graham that he would have three weeks to look out for a lodging; in reply to which the said William Graham repeated he could not get one, and should not attempt to do so, or used words to that effect; and this deponent saith, that he then told the said William Graham it would be useless to offer any opposition to the law, as the warrant would be enforced at the expiration of the three weeks, and \*the landlord then offered to forgive the said William Graham the [“249] arrears of rent if he would give up the apartments, but this he refused to do, and in due course therefore the necessary warrant was issued; but this deponent saith, that pending the period allowed by law for the execution of the warrant, the said William Graham was sent to by Mr. Finch, the chief clerk of the said police court, for the purpose of inducing the said William Graham quietly to quit the apartments, and so avoid the execution of the warrant; but this deponent saith, that the said William Graham having obstinately refused to do so, and the landlord having again attended at the court and pressed the immediate execution of the warrant, Friday the 5th day of November, was fixed for the purpose; on which day, about half-past three o’clock, this deponent being then engaged upon an important case, the said Mr. Finch told this deponent that Mr. M·Donald, a surgeon residing in Woolwich aforesaid, was in attendance for the purpose of making a statement with reference to the state of Mrs. Graham’s health, in support of an application by the said William Graham that the execution of the warrant might be deferred; and this deponent saith, that he thereupon desired that the said Mr. M·Donald might be sworn, and the said Mr. M·Donald having been sworn, this deponent inquired of him whether he considered there was any danger in Mrs. Graham’s removal, and the said Mr. M·Donald replied, “Certainly not, if she had any place to go to,” or words to that effect; and this deponent then said, there are plenty of taverns and lodging-houses in the town, and it seems to this deponent a mere excuse on the part of the tenant to evade the law, which must take its course, or words to that effect; and this deponent saith, that the said Mr. M·Donald did not state in his evidence

before this deponent, or in the hearing of this deponent, nor had this deponent at all heard, that it would be extremely unsafe to remove Mrs. Graham at that time, and that he should strongly oppose such a proceeding, or to that effect, but on the contrary the said Mr. M'Donald stated, as hereinbefore mentioned, that there was no danger in her removal if she had any place to go to, or to that effect. However, this deponent saith, that he has since been informed that the said Mr. M'Donald did make some remark to the said Mr. Finch in reply to a question from him, to the effect that the said Mrs. Graham was poorly, thereby meaning, as this deponent supposes, that she was very near her accouchement; and this deponent saith, that although he does not remember that the said Mr. M'Donald made any such remark, he did understand at the time [250] \*that the said Mrs. Graham was very near her accouchement, but did not gather from the evidence of the said Mr. M'Donald that there was any thing in the condition of the said Mrs. Graham which would make her removal unsafe if she had any place to go to; and this deponent saith, that he did not order Superintendent Mallalieu to proceed directly and see the warrant of ejectment carried into effect, neither did this deponent give any order whatever to Superintendent Mallalieu on the subject, neither did this deponent add tauntingly, or in any other manner, "Officer, it has not gone four o'clock yet, and there is plenty of time to execute the order; go and see it done accordingly, and return and let me know that it has been done. I thought at the first it was a trumpety excuse to keep possession;" nor did this deponent utter to Inspector Mallalieu, or to any other person, any expression to that or the like effect; and this deponent saith, that there is no other foundation, as far as this deponent is aware, for the words so put into the mouth of this deponent by the said newspaper, than the circumstance that Mr. Finch, the chief clerk, reminded this deponent that it was near four o'clock, as hereinbefore mentioned, and which he did, as this deponent believes, in order to prevent any irregularity in the proceeding, and as his reason for interrupting this deponent in the investigation of the important case before referred to; and that the warrant was in fact executed; and that this deponent did express his opinion that the condition of the wife of the said William Graham was made an excuse for keeping possession, or something to that effect, and did direct that the law should take its course; and that the said Mr. Finch, under the authority of this deponent, and in order to relieve the anxiety of this deponent under the painful position in which this deponent had been placed by the obstinacy of the said William Graham, desired Mr. Brown, the inspector of police at Woolwich, himself to see to the execution of the warrant, and to stay the execution thereof if the facts as to the situation of the said Mrs. Graham should turn out as represented by her husband; and upon subsequent inquiry this deponent was informed and he believes that the said inspector acted accordingly; and this deponent saith, that the said Mr. M'Donald did not in the hearing of this deponent protest against the disregard with which this deponent had treated his representation, nor does this deponent remember or believe that the said William Graham during the investigation of the case, or before or afterwards, in the hearing of this deponent remonstrated against the removal of his wife, or that he [251] expressed any \*assurance or conviction that such removal would

be attended with the worst results. And this deponent saith, that in the said newspaper is the following passage:—"The deplorable result of this brutal proceeding will be best described in a letter from Mr. Graham, which appeared in the *Morning Advertiser* on last Monday:—

"Woolwich, Nov. 13.

"Sir,—You were kind enough to state in your valuable journal of Monday last the conduct of Mr. G.—, the magistrate, towards Mr. M'Donald, surgeon, and myself, in reference to a case of ejectment, by a Mr. Longer, of her Majesty's Dock Yard, against me and my family at the time it was highly dangerous to remove my wife, she being near her accouchement. Mr. G.— ordered the warrant to be instantly executed. The same was put in force by four of the police constables, and my furniture thrust into the street, together with my four children and wife, without a chance of obtaining a lodging for them. Of course the sudden fright had the effect as stated by Mr. M'Donald, the surgeon, would be the case, before the magistrate, of causing either the death of the mother or child. I now have to inform you, that my wife, from the time the occurrence took place, has been in a very alarming state. She was confined yesterday at noon with a dead child, and is now herself in a dangerous condition, the whole of it caused by the conduct of Mr. G.—, the police magistrate. I beg to state my determination to lay before the Secretary of State for the Home Department the whole particulars of this case, and if possible to have a thorough investigation into the conduct of a man who calls himself a magistrate.

I remain your obedient servant,

(signed) WM. GRAHAM."

"Comment on such a picture as this is almost needless: it requires no colouring to aggravate its revolting features; but we feel it our duty to call upon Sir James Graham to remove from the magisterial bench a man who so grossly abuses the power which has been intrusted to him. This is not a case which can be cushioned and salved and quashed by a mock investigation: here are facts—damning facts—which no sophistry can palliate or excuse. If Mr. Graham pursue manfully his intention of demanding a thorough investigation, though he cannot obtain reparation for the deep injury he has sustained, he must, we feel assured, procure the punishment of the offending party. Should, however, the \*Home Secretary again endeavour to throw his protecting influence over an unworthy [\*252] object, a petition should instantly be laid at the foot of the Throne itself. Our gracious monarch will not turn a deaf ear to a case which must excite her deepest pity and indignation. As a queen, a woman, and as a mother, she will be called upon to do justice on the heartless offender." And this deponent saith, that the said Mr. M'Donald did not say in the hearing of this deponent, or as this deponent believes, that the removal of the said Mrs. Graham would have the effect of causing either her death or that of her child; nor did the said Mr. M'Donald lead this deponent to believe that her removal would be attended with any bad effect if she had a place to go to. And this deponent saith, that after the appearance of the said paragraph in the said *Sunday Times* newspaper, of the 21st day of November, 1841, and after this deponent's attention was drawn thereto as aforesaid, this deponent

JULY, 1847.—2

received a letter from the office of the Secretary of State for the Home Department, of which the following is a copy:—

“Whitehall, 24th Nov. 1841.

Sir,—I am directed by Secretary Sir James Graham to enclose to you an extract from the ‘Morning Advertiser,’ containing an account of the case of Mr. Graham, who applied to you for the extension of an order of ejectment which had been obtained against him; and I am to request that you will give Sir James Graham full information as to all that took place before you in this case, particularly as to the statements made on the accompanying paper.”

I am, Sir,

To W. G——, Esq.,  
Police Court, Woolwich.”

Your obedient servant,  
S. M. PHILLIPS.

Extract from the “Morning Advertiser” of the 15th of November:—

“A few days since there appeared in our columns, under the head of ‘Police Intelligence,’ the report of a case wherein Mr. Graham, a highly respectable man of the town of Woolwich, applied to Mr. G——, the presiding magistrate, for the extension of an order of ejectment obtained against him by a Mr. Longer, a measurer in her Majesty’s Dock Yard, upon the plea of his wife’s state of health, which would be endangered by her removal; which fact was supported by an experienced gentleman (Mr. McDonald) on his oath, who stated that he did not consider it safe to remove her in her then state of affliction, and that he should not recommend [\*253] such a proceeding; notwithstanding which, \*the magistrate then gave orders to Mr. Superintendent Mallalieu, of the R. Division of Police, to see the warrant of ejectment immediately carried into effect. To quote his own words—‘Officer, it has not gone four o’clock yet, and there is plenty of time to execute the order; go and see it done accordingly, and return and let me know that it has been done. I thought at first it was a trumpery excuse to keep possession.’ Mr. McDonald, a highly respectable medical practitioner of Woolwich for many years, loudly complained of the treatment he received from the magistrate, and so expressed himself to him, whilst Mr. Graham protested under Mr. McDonald’s opinion against the forcible removal of his wife in her then condition; and expressed his fears of the result, which have been fully borne out, as we perceive, by a letter from Mr. Graham. [Here follows a verbatim copy of the letter, dated ‘Woolwich, 13th Nov.,’ ante, p. 251.]” And this deponent saith, that, in reply to the said letter, this deponent wrote and sent a reply as follows; that is to say,

“Greenwich Police Court, Nov. 26, 1841.

“Sir,—In reply to your letter of the 24th inst., with reference to an extract from the ‘Morning Advertiser,’ containing an account of the case of Mr. Graham, I beg to state, for the information of Secretary Sir James Graham, that, on the 8th of October, the party referred to appeared before me on a notice from his landlord, under the provisions of the Recovery of Tenements Act, to shew cause why he should not give up possession of a tenement consisting of two rooms in Charles Street, Woolwich. The requi-

site proofs having been put in, he was called upon to state whether he had any thing to urge why a warrant should not be issued in compliance with the act, when he objected, on the ground of his wife being near her confinement, and said he could not procure another lodging. I informed him he would have three weeks to look out for one, when he repeated he could not get one, and should not attempt to do so. I told him it would be useless to offer any opposition to the law, as the warrant would be enforced at the expiration of that period. The landlord then offered to forgive him the arrears of rent if he would give up the apartments. This he refused to do, and in due course the warrant was issued; but previously to its being delivered to the officer, the usher of the court was sent to Mr. Graham for the purpose of avoiding any alarm to his wife, to prepare him to expect that he would be put out of possession when the given time \*had expired. [254] This communication having been twice repeated, and as often disregarded, the landlord again attended at the court and pressed the immediate execution of the warrant, which was accordingly fixed for Friday the 5th of this month; on which day, about half-past three o'clock, Mr. Graham entered the court with M'Donald, the surgeon. The act of Parliament requires that the warrant shall be executed before four o'clock; and the chief clerk requested my attention to that point. Having ascertained the object of their attendance, I asked Mr. M'Donald whether he considered there was any danger in Mrs. Graham's removal, and he replied, 'Certainly not, if she had any place to go to.' I then said there were many other lodgings in the town, and it seemed to me a mere excuse on the part of the tenant to evade the law, which must take its course. The parties then left the court, and the inspector of police was directed to proceed to Mr. Graham's apartments to ascertain the state of Mrs. Graham's health, and to stop the execution of the warrant if any injury appeared likely to arise from it. He stated, on his return, that he had found Mrs. Graham well enough to assist the officers who had commenced the removal of the goods, and, though pressed by him not to interfere, she persisted in doing so. On the following day the usher was ordered to inquire after her, and he made me a favourable report, and has since informed me that she was not confined until some day in the following week. Mr. M'Donald never stated that it would be unsafe to remove the woman; still less that it would occasion her death or the death of her child; nor did the husband, in my presence, express any apprehension of such a result. Every precaution was taken to prevent any ill consequences ensuing, and, if any such have arisen, Mr. Graham must be well aware he can only impute them to his own obstinacy in the matter, and not to any harsh treatment he received from me. His silence is a sufficient confirmation of that opinion, for though three weeks have elapsed since the proceeding took place, he has not preferred any complaint on the subject in the proper quarter, where he knew, if he was aggrieved, he would meet with redress. With respect to the newspaper report it is so grossly exaggerated, and contains statements so contrary to the truth, that, as soon as I had been made acquainted with it, I lost no time in instructing my solicitor to institute proceedings against the editor for the foul calumny on my character, by a criminal information in the Court of Queen's Bench, which, supported by the ample testimony I have to confirm me in my own, would have been moved for in \*the term which has just expired, had there been time to prepare the neces- [255]

sary affidavits. As it is, an application will be made at the earliest period of the ensuing term for that purpose. I will only add, that I trust Sir James Graham will consider the explanation I have given of my conduct satisfactory to him; and I feel the fullest confidence that the court will do me equal justice in the case which I shall bring before it.

I have the honour to be, Sir,

Your most obedient servant,

To S. M. Phillips, Esq.,  
&c. &c.

W. G——.

And this deponent saith, that he has since received a further letter from the office of the Secretary of State for the Home Department, of which the following is a copy:—

“Whitehall, 27th Nov. 1841.

“Sir,—I have laid before Secretary Sir James Graham your letter of the 26th inst., reporting upon the statements made in the ‘Morning Advertiser’ relative to your decision in the case of Mr. Graham; and I am to inform you that your explanation is quite satisfactory to Sir James Graham.

I am, Sir,

Your obedient servant,

To W. G——, Esq.,  
Police Court, Greenwich.”

S. M. PHILLIPS.

And this deponent further saith, that the whole of the said article, so far as it imputes harsh, oppressive and unfeeling conduct to this deponent in discharge of his duty as a magistrate, in relation to the said case, is entirely false, and that this deponent had no interest whatever in the subject-matter of the said proceeding, and no bias, or cause of bias in his mind for or against either of the parties to the same; and that throughout the same he acted according to the best of his judgment, and according to what he then believed, and still does believe, to have been his public duty. And, lastly, this deponent saith that the reference in the said article conveyed (speaking of this deponent) by the words “his brutal libel against the people of Ireland, and his unfeeling conduct towards the young man Murphy,” has reference to a case which came before him in his magisterial character in the month of September last, in which this deponent, in an unguarded moment, made use of certain expressions applicable to a particular description of persons—natives of Ireland; and which expressions, having been misunderstood, led to the [\*256] erroneous belief that he had spoken of all the people of Ireland as unworthy of belief upon their oath as witnesses; and which this deponent upon his oath declares it never was his intention to express in point of meaning. But this deponent saith, that having, upon such occasions, unfortunately used those expressions, he has never complained, nor does he now complain, of any severity of remark in the said, or any other newspaper or other publication on that subject.

W. G——.

Sworn at my chambers in Rolls  
Garden, Chancery lane, this  
10th day of January, 1842,  
before me,

J. T. COLERIDGE.

N. B.—There were *twelve* other affidavits confirming that of Mr. G.— in all material respects, and contradicting the most essential statements in the libel. Also certificate and affidavits proving the publication of the newspaper pursuant to 6 & 7 Will. 4, c. 76, s. 8. (See post, No. 5.) A rule nisi was granted, which was afterwards discharged upon the defendants making an ample apology fully exonerating Mr. G.— from all the imputations, and upon payment by the defendants of the costs of the application.

Affidavits in support of the applications for criminal informations must of course, vary in each particular case. The foregoing affidavit appears to have been most carefully settled by counsel; and coupled with the general directions for framing such affidavits, (ante, 50 to 58), will enable the necessary affidavits to be prepared in almost any case. (For other forms, see 2 Gude, 4 to 13.)

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No. 5.

Certificates and Affidavits proving Publication of a Newspaper, pursuant to 6 & 7 Will. 4, c. 75, s. 8.

WE, John Kemble Chapman, of No. 72, Fleet-street, in the city of London, printer; Henry, Lamb, of No. 134, Salisbury-square, Fleet-street, in the said city of London, Esquire; and Thomas Lamb, of the same place, Esquire, do severally, solemnly and sincerely declare and say as follows: (that is to say), I, the said John Kemble Chapman, do declare and say, that I am the printer of a certain newspaper entitled "Sunday Times;" and I the said John Kemble Chapman do also declare and say, that I am the publisher of the said newspaper; and we the said Henry Lamb and Thomas Lamb do declare and say, that we \*are the sole proprietors of the same newspaper; and we the said John Kemble Chapman, Henry Lamb, and [\*257] Thomas Lamb, do further declare and say, that the aforesaid newspaper is intended to be printed at the printing office of the said John Kemble Chapman, situate in Peterborough-court, in the parish of St. Bride, in the city of London aforesaid, and to be published at No. 72, Fleet-street, in the said parish of St. Bride, in the city of London; and we do severally make this solemn declaration conscientiously believing the same to be true, and in pursuance of an act passed in the seventh year of the reign of his late Majesty King William the Fourth, intituled "An Act to reduce the Duties on Newspapers, and to amend the Laws relating to the Duties on Newspapers and Advertisements."

JNO. K. CHAPMAN,  
HENRY LAMB,  
THOS. LAMB.

Declared at the Office for stamps and Taxes, Somerset House, in the city of Westminster, by John Kemble Chapman, Henry Lamb, and Thomas Lamb, this 24th day of August, 1838, before me.

C. P. RUSHWORTH,  
A commissioner of stamps and taxes.

In pursuance of an act passed in the seventh year of the reign of his late Majesty King William the Fourth, for reducing the duties on newspapers, and amending the laws relating to the duties on newspapers and advertisements, I do hereby certify that the within is a true copy of the original declaration relating to the newspaper therein mentioned, delivered to the commissioners for stamps and taxes pursuant to the said act, and kept and filed at the head office for stamps at Westminster by the direction of the said commissioners.

Dated this first day of January, one thousand eight hundred and forty-two.

JOHN THORNTON,

A commissioner for stamps and taxes.

This is the paper referred to in the affidavit of A. C., sworn before me this 10th day of January, 1842.

J. T. C.

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[\*258]      \*(In the Queen's Bench.)

A. C. clerk to J. C., of &c., gentleman, maketh oath and saith, That he, this deponent was present and did see John Thornton, esquire a commissioner for stamps and taxes, on the first day of January instant, at the Office of Stamps and Taxes, Somerset House, in the city of Westminster, as such commissioner, sign his name to the certificate appearing on the paper hereunto annexed, and that the name "John Thornton," subscribed to the said certificate is of the proper handwriting of the said John Thornton.

A. C.

Sworn at my chambers, Rolls Garden, Chancery-lane, this 10th day of January 1842, before me.

J. T. COLERIDGE.

N. B.—A newspaper containing the libel and corresponding in title and in the names of the printers and publishers and place of printing, &c., must be filed with the affidavits, and referred to in the rule nisi. (Reg. v. Woolmer, 12 Ad. & Ell. 422; 4 Per. & Dav. 137, S. C.: Rex v. Francays, 2 Ad. & Ell. 49: Rex v. Donnison, 4 B. & Adol. 698: Mayne v. Fletcher, 9 B. & C. 382: Rex v. Hunt, 31 St. Tr. 375; Ros. Ev. C. C. 603, 2d edit.)



## No. 6.

## Rule Nisi for a Criminal Information.

Friday, the 14th day of January, in the fifth year of the reign of Queen Victoria.

(In the Queen's Bench.)

*Yorkshire.* } UPON reading [the several affidavits of — and —, and  
 } the paper writing thereto annexed, and also part of a printed  
 paper thereto annexed beginning with the words — and ending with the  
 words —,] It is ordered, That Saturday, the 22d day of January, in this  
 term, be given to J. S. to show cause why an information should not be  
 exhibited against him for certain misdemeanors [*adding in libel cases, "in*  
*printing and publishing certain scandalous libels,"*] upon notice of this rule  
 to be given to him in the meantime.

On the motion of Mr. —.

By the Court.

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\*No. 7.

[\*259]

## Affidavit of Service of Rule Nisi.

(In the Queen's Bench.)

J. C., of &c., gent., maketh oath and saith, that he, this deponent, did  
 on the — day of — instant, personally serve J. S., the person named  
 in the rule hereto annexed, with a true copy of the said rule, and at the  
 same time showed him the said original rule. [*Or if the service was not*  
*personal omit the word "personally," and after the words "with a true*  
*copy of the said rule," say "by delivering such copy to and leaving the*  
*same with a female servant [or the wife, or son, &c., as the case may be]*  
*of the said J. S., at his dwelling-house situate —, and at the same time*  
*this deponent showed to the said [servant] the said original rule.*

Sworn at, &c.

J. C.

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No. 8.

## Enlarged Rule for a Criminal Information.

Friday, the 28th day of January, in the fifth year of the reign of Queen Victoria.

(In the Queen's Bench.)

*Yorkshire.* } UPON [reading the affidavit of J. S., and upon] hearing counsel  
 } on both sides, It is ordered, that the third day of the next term

be further given to J. S. to show cause why an information should not be exhibited against him for certain misdemeanors [in printing and publishing certain scandalous libels;] the said J. S. hereby undertaking, in case the said information shall be exhibited, to appear and plead thereto within four days afterwards, or in default that the prosecutor may sign judgment against him for want of a plea: and it is further ordered, that all affidavits to show cause be filed a week before the next term, [or "a week before the day of showing cause."]

Mr. Solicitor-General, for the prosecutor.

Mr. —, for the defendant.

By the Court.

[\*260]

\*No. 9.

Rule discharging Rule Nisi for a Criminal Information upon Payment of Costs.

Monday, the 9th day of May, in the fifth year of the reign of Queen Victoria.

*London.*  
The Queen  
on the prosecution of  
J. W. M., Esq.,  
against  
A. A. W.,

} Upon hearing counsel on both sides and by consent, It is ordered, That upon payment of all costs (as between attorney and client)(a) by the defendant to the prosecutor or his attorney, (such costs, if necessary, to be taxed by the coroner and attorney of this court,) the rule made this term, that the said A. A. W. should show cause why an information should not be exhibited against him for certain misdemeanors in printing and publishing certain scandalous libels be discharged.

Mr. Attorney-General, for the prosecutor.

Mr. Thesiger, for the defendant.

By the Court.

No. 10.

Rule Absolute for a Criminal Information.

Monday, the 18th day of April, in the fifth year of the reign of Queen Victoria.

(In the Queen's Bench.)

*Yorkshire.* } Upon reading the several affidavits of [A. B., C. D., &c., and the paper writing thereto annexed,] and upon hearing counsel on both sides, It is ordered, That an information be exhibited against J. S. for certain misdemeanors, [in libel cases say, "in printing and publishing certain scandalous libels."]

Mr. Solicitor-General, for the prosecutor.

Mr. —, for the defendant.

By the Court.

(a) This is not usual, and where not specially ordered by consent, the words, "as between attorney and client," must be omitted.

\*No. 11.

[\*261]

Recognizance taken before the Master of the Crown Office.

*London.* } Bz it remembered, That on the — day of —, in the —  
 } year of the reign of our Sovereign Lady Victoria, by the grace  
 of God of the United Kingdom of Great Britain and Ireland Queen, De-  
 fender of the Faith, before Charles Francis Robinson, Esquire, coroner and  
 attorney of our Lady the Queen in the court of our said Lady the Queen,  
 before the Queen herself, cometh E. F., of &c., gent., and acknowledgeth  
 himself to owe to J. S. and T. R. the sum of £20 of lawful money of Great  
 Britain; upon condition to prosecute with effect a certain information exhib-  
 ited against them the said J. S. and T. R. in the said court by the said  
 Charles Francis Robinson for certain misdemeanors, and to perform such  
 orders as the said court shall direct in that behalf.

Taken and acknowledged the day  
 and year first above said, before  
 me, C. F. ROBINSON.

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 No. 12.

Recognizance taken before a Magistrate.

*Staffordshire.* } Bz it remembered, That on the — day of —, in the  
 } — year of the reign of our Sovereign Lady Victoria, by  
 the grace of God of the United Kingdom of Great Britain and Ireland  
 Queen, Defender of the Faith, before J. P., Esquire, one of the keepers of  
 the peace and justices of our Lady the Queen in and for the county of  
 Stafford, cometh E. F., of &c., gent., and acknowledgeth himself to owe to  
 J. S. the sum of £20 of lawful money of Great Britain; upon condition to  
 prosecute with effect a certain information exhibited by Charles Francis  
 Robinson, Esquire, coroner and attorney of our said Lady the Queen in the  
 court of our said Lady the Queen before the Queen herself, against the  
 said J. S. for certain misdemeanors, and to perform such orders as the said  
 court shall direct in that behalf.

Taken and acknowledged the day  
 and year first above said, before  
 me, J. P.

[\*262]

\*No. 13.

Criminal Information by the Attorney-General ex officio for Bribery at an Election of a Member of Parliament.

Of Michaelmas Term in the fifth year of Queen Victoria.

*Cambridgeshire,* } Be it remembered, That Sir Frederick Pollock, Knight,  
*to wit.* } Attorney-General of our present Sovereign Lady the Queen, who, for our said Lady the Queen, in this behalf prosecuteth, in his own proper person cometh into the court of our said Lady the Queen before the Queen herself at Westminster, on Tuesday the second day of November in this same term, and for our said Lady the Queen giveth the court here to understand and be informed, That before and at the time of the committing of the offences hereinafter mentioned, to wit, on the 1st day of August, in the year of our Lord, 1839, the borough of Cambridge, in the county of Cambridge, was and still is a borough electing, sending, and returning two members to serve for the said borough in the Parliament of the United Kingdom of Great Britain and Ireland, to wit, at Cambridge aforesaid, in the county aforesaid. And the said Attorney-General of our said Lady the Queen further giveth the court here to understand and be informed, that before the committing the several offences hereinafter mentioned, to wit, on the 1st day of August, in the year of our Lord, 1839, at Cambridge aforesaid, in the county aforesaid, an election of a member to serve in the Parliament of the United Kingdom of Great Britain and Ireland, as one of the members for the said borough of Cambridge was expected shortly to be had and made, which said expected election afterwards, to wit, on the 5th day of September in the year aforesaid, at Cambridge aforesaid, in the county aforesaid, was had and made. And the said Attorney-General of our said Lady the Queen further gives the court here to understand and be informed, that *Samuel Long*, late of Cambridge aforesaid in the county aforesaid, harness maker, unlawfully, wickedly, and corruptly intending to hinder and prevent the free and indifferent election of a member to serve in the Parliament of the United Kingdom of Great Britain and Ireland for the said borough of Cambridge, and by illegal and corrupt means to procure John Henry Thomas Manners Sutton, Esq., commonly called the Hon. J. H. T. M. S. (who before and at the time of the said election, was a candidate to represent the said \*borough of Cambridge in the said Parliament), [\*263] to be elected a member to serve in the said Parliament of the United Kingdom of Great Britain and Ireland for the said borough of Cambridge, did, on the 22d day of August, in the year aforesaid, at Cambridge aforesaid, in the county aforesaid, unlawfully, wickedly, and *corruptly promise to one G. S.* (he the said G. S. then and there, and before and at the time of the said expected election, claiming a right to vote at the election of a member or members, as the case might be, to serve in the said Parliament of the United Kingdom for the said borough of Cambridge) a large sum of money, to wit, the sum of £9, as a gift, bribe, and reward to him the said G. S. to engage, corrupt, and procure the said G. S. to give his vote at the said expected election of a member to serve in the said Parliament for the said

borough of Cambridge, for the said J. H. T. M. S., so being such candidate as aforesaid, that the said J. H. T. M. S. might be elected at the said election to serve in the said Parliament for the said borough of Cambridge. And thereupon, afterwards to wit, on the 28th of August, in the year aforesaid, at Cambridge aforesaid, in the county aforesaid, the said S. L. did in pursuance and fulfilment of the said promise unlawfully, wickedly and *corruptly give and cause and procure to be given to the said G. S.* a large sum of money, to wit, the said sum of £9, as a gift, bribe, and reward to the said G. S., in order and with intent to induce, procure, and corrupt the said G. S. by means of the said gift, bribe, and reward to give his vote for the said J. H. T. M. S. at the said expected election of a member to serve in the said Parliament for the said borough of Cambridge, that he the said J. H. T. M. S. might be chosen and returned at the said election to serve in the said Parliament for the said borough; to the great obstruction and hindrance of the freedom of election of a member to serve in the said Parliament for the said borough; to the evil example of all others in like case offending, and against the peace of our said Lady the Queen, her crown and dignity.

*2nd Count.*—And the said Attorney-General of our said Lady the Queen, on behalf of our said Lady the Queen, further gives the court here to understand and be informed that the said S. L., further unlawfully, wickedly, and corruptly contriving and intending as aforesaid, did afterwards, to wit, on the same day and year last aforesaid, at Cambridge aforesaid, in the county aforesaid, the said election being then and there so expected as in the first count of this information mentioned, unlawfully, wickedly, and *corruptly give and cause and procure to be given to the said \* G. S.*) he the said G. S. then and there, and before, and at the time of the said [\*264] first count mentioned, claiming a right to vote at the election of a member or members, as the case might be, to serve in the Parliament of the United Kingdom of Great Britain and Ireland for the said borough of Cambridge) a large sum of money, to wit, the sum of £9, as a gift, bribe, and reward to the said G. S., in order and with the intent to induce, engage, procure, and corrupt by means of the said gift, bribe, and reward, him the said, G. S. to give his vote, at the said expected election of a member to serve in the said Parliament for the said borough, for the said J. H. T. M. S., who was then and there, and before, and at the time of the said election so then expected as aforesaid, a candidate to represent the said borough in the said Parliament of the said United Kingdom, that he the said J. H. T. M. S. might be chosen and returned to serve in the said Parliament for the said borough; to the great obstruction and hindrance of the freedom of the said expected election of a member of Parliament for the said borough; to the evil example of all others in like case offending, and against the peace of our said Lady the Queen, her crown, and dignity.

*3rd Count.*—And the said Attorney-General of our said Lady the Queen, on behalf of our said Lady the Queen, further gives the court here to understand and be informed that the said S. L., further wickedly and unlawfully contriving and intending as aforesaid, did afterwards, and while the said election was so expected, as in the said first count mentioned, to wit, on the 27th day of August, in the year aforesaid, at Cambridge aforesaid, in the county aforesaid, unlawfully, wickedly, and *corruptly promise to one G. S.*

(he the said G. S. then and there, and before, and at the time of the said expected election in the said first count mentioned, claiming a right to vote in the election of a member or members, as the case might be, to serve in the said Parliament of the United Kingdom of Great Britain and Ireland for the borough of Cambridge) *to give to one Charlotte S.* (then and there being the wife of the said G. S.) a large sum of money, that is to say, *the sum of £9 to and for the use of him and the said G. S.*, as a gift, bribe, and reward, to the said G. S., to induce, procure, and corrupt the said G. S. to give his vote, at the said election so then expected as aforesaid, for the said J. H. T. M. S., he the said J. H. T. M. S. being then and there, and before, and at the time of the said election so then expected as aforesaid, a candidate to [\*265] represent the \*said borough in the said Parliament, in order that he the said J. H. T. M. S. might be, at the said election, chosen and returned to serve in the said Parliament as a member for the said borough; and afterwards, to wit, on the 28th day of August, in the year aforesaid, did, in pursuance and fulfilment of the said unlawful and corrupt promise, *give to the said Charlotte S.* (then and there so being the wife of the said G. S. as aforesaid) a large sum of money, to wit, the sum of *£9 to and for the use of the said G. S.*, as a gift, bribe and reward to the said G. S., in order and with the intent to induce, procure, and corrupt the said G. S. by means of the said gift, bribe, and reward, to give his vote at the said election for a member of Parliament, for the said borough of Cambridge, so then expected as aforesaid, for the said J. H. T. M. S., who was then and there, and before and at the said election, a candidate to represent the said borough in the said Parliament, that he the said J. H. T. M. S. might be elected, chosen, and returned to serve in the said Parliament for the said borough: to the great obstruction and hindrance of the freedom of election of members to serve in the Parliament of the said United Kingdom; to the evil example of all others in like case offending, and against the peace of our said Lady the Queen, her crown, and dignity.

*4th Count.*—And the said Attorney-General of our said Lady the Queen, on behalf of our said Lady the Queen, further gives the court here to understand and be informed that the said S. L. further wickedly, unlawfully, and corruptly contriving and intending as aforesaid, afterwards, and while the said election was so expected, as in the said first count mentioned, to wit, on the 28th day of August, in the year aforesaid, at Cambridge aforesaid, in the county aforesaid, did unlawfully, wickedly, and *corruptly give to one Charlotte S.* (she the said C. S. then and there being the wife of one G. S., which said G. S. then and there, and before and at the time of the said election, so then and there expected to take place as in the said first count mentioned, claimed a right to vote in the election of a member or members, as the case might be, to represent the said borough of Cambridge in the Parliament of the United Kingdom of Great Britain and Ireland) a large sum of money, to wit, the sum of *£9 to and for the use of the said G. S.*, as a gift, bribe, and reward to the said G. S., in order and with the intent unlawfully and wickedly to induce, procure, and corrupt, by means of the said last-mentioned gift, bribe, and reward, the said G. S. to give his \*vote at the said election so then [\*266] and there expected as aforesaid, for the said J. H. T. M. S., he the said J. H. T. M. S. being then and there, and before and at the time of the

said election, a candidate to represent the said borough of Cambridge in the said Parliament of the said United Kingdom, that he the said J. H. T. M. S. might be, at the said election, chosen and returned to serve in the said Parliament, as a member for the said borough : to the great hindrance and obstruction of the freedom of election of members to serve in the Parliament of the said United Kingdom ; to the evil example of all others in the like case offending, and against the peace of our said Lady the Queen, her crown, and dignity.

*5th Count.*—And the said Attorney-General of our said Lady the Queen, on behalf of our said Lady the Queen, further gives the court here to understand and be informed that the said S. L. further unlawfully, wickedly, and corruptly contriving and intending as aforesaid, afterwards, and while the said election was so expected, as in the said first count mentioned, to wit, on the 28th day of August, in the year aforesaid, at Cambridge aforesaid, in the county aforesaid, did unlawfully, wickedly, and *corruptly promise to one W. M.* (he the said W. M. then and there, and before and at the time of the said election so then expected, as in the said first count mentioned, claiming a right to vote in the election of a member or members, as the case might be, to represent the said borough of Cambridge in the Parliament of the United Kingdom of Great Britain and Ireland) *that if he the said W. M. would promise to give his vote*, at the said expected election, for the said J. H. T. M. S. (who was then and there a candidate to be chosen to represent the said borough in the said Parliament at the said expected election) that he the said J. H. T. M. S. might be chosen and returned, at the said election, to serve as a member for the borough of Cambridge in the said Parliament, he the said S. L. *would give and cause to be given to him the said W. M. a large sum of money*, to wit, the sum of £9, as a bribe, gift, and reward, to corrupt and procure the said W. M. to give his vote, at the said expected election, for the said J. H. T. M. S., that he the said J. H. T. M. S. might be chosen and returned, at the said expected election, to serve as a member for the said borough in the said Parliament of the said United Kingdom : to the great hindrance and obstruction of the free election of a member of Parliament for the said borough, at the said expected election ; to the evil example of all others in like case offending, \*and against the peace [\*267] of our said Lady the Queen, her crown and dignity.

*6th Count.*—And the said Attorney-General of our said Lady the Queen, for our said Lady the Queen, further gives the court here to understand and be informed that the said S. L. further unlawfully, wickedly and corruptly contriving and intending as aforesaid, afterwards, and while the said election was so expected, as in the said first count mentioned, to wit, on the 28th day of August, in the year aforesaid, at Cambridge aforesaid, in the county aforesaid, did unlawfully, wickedly, and *corruptly offer to one W. M.* (he the said W. M. then and there, and before and at the time of the said election so then expected, as in the said first count mentioned, claiming a right to vote in the election of a member or members, as the case might be, to represent the said borough of Cambridge in the Parliament of the United Kingdom of Great Britain and Ireland) *to give to the said W. M. a large sum of money*, to wit, the sum of £9 *if he the said W. M. would promise to give his vote*, at the said expected election, for the said J. H. T. M. S., who was then and there a candidate to be chosen to represent the said

borough in the said Parliament, at the said expected election, that he the said J. H. T. M. S. might be chosen and returned at the said election to serve as a member for the borough of Cambridge in the said Parliament; and that the said S. L. did then and there *offer the said sum of money*, that is to say, the said sum of £9 to the said W. M., as a bribe, gift, and reward to corrupt and procure the said W. M. to give his vote, at the said expected election, for the said J. H. T. M. S., that he the said J. H. T. M. S. might be chosen and returned at the said expected election to serve as a member for the said borough in the said Parliament of the said United Kingdom: to the great hindrance and obstruction of the free election of a member of Parliament for the said borough at the said expected election; to the evil example of all others in the like case offending, and against the peace of our said Lady the Queen, her crown, and dignity.

*7th Count.*—[Exactly like the 5th count, except in stating that the promise to W. M. was made "if he the said W. M. would give his vote," instead of "promise to give his vote," &c.]

*8th Count.*—[Exactly like the 6th count, except in stating that the offer to W. M. was made "if he the said W. M. would give his vote," instead of "promise to give his vote," &c.]

*\*9th Count.*—And the said Attorney-General of our said Lady [\*268] the Queen, on behalf of our said Lady the Queen, further gives the court here to understand and be informed that the said S. L. further unlawfully, wickedly, and corruptly contriving and intending as aforesaid, afterwards, and while the said election was so expected, as in the said first count mentioned, to wit, on the 28th day of August, in the year aforesaid, at Cambridge aforesaid, in the county aforesaid, did unlawfully, wickedly, and corruptly *promise to one W. M.* (he the said W. M. then and there, and before and at the time of the said election so then expected, as in the said first count mentioned, claiming a right to vote in the election of a member or members, as the case might be, to represent the said borough of Cambridge in the Parliament of the United Kingdom of Great Britain and Ireland) *that if he the said W. M. would promise to give his vote* at the said expected election, for the said J. H. T. M. S. (who was then and there a candidate to be chosen to represent the said borough in the said Parliament at the said expected election,) that he the said J. H. T. M. S. might be chosen and returned at the said election to serve as a member for the borough of Cambridge in the said Parliament, he the said S. L. *would give and cause to be given to him* the said W. M. a large sum of money, to wit, *ten sovereigns*, that is to say, ten pieces of the current gold coin of this realm of the value of ten pounds, *on condition that he the said W. M. would let him the said S. L. take back one, that is to say, one of the said sovereigns for himself*, that is to say, for him the said S. L., as a bribe, gift, and reward, to corrupt and procure the said W. M. to give his vote at the said expected election for the said J. H. T. M. S., that he the said J. H. T. M. S. might be chosen and returned at the said expected election to serve as a member for the said borough in the said Parliament of the said United Kingdom: to the great hindrance and obstruction of the free election of a member of Parliament for the said borough at the said expected election; to the evil example of all others in like cases offending, and against the peace of our said Lady the Queen, her crown and dignity.



*10th Count.*—[Exactly like the 9th count, except in stating that the promise to W. M. was made “if he the said W. M. would *give his vote*,” instead of “promise to give his vote,” &c.]

Whereupon the said Attorney-General of our said Lady the Queen, for our said Lady the Queen, prays the consideration of the court here in the premises, and that due \*process of law may be awarded against him the said S. L. in this behalf, to make him answer to our said Lady [\*269] the Queen touching and concerning the premises aforesaid.

*Note.*—For other precedents of ex officio informations, see post, No. 18, pp. 279-281.

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### No. 14.

Criminal Information by the Master of the Crown Office for a gross Libel on a Nobleman and his Family, published in the *Satirist* newspaper.

Of Michaelmas term in the second year of Queen Victoria.

*Middlesex.* } Be it remembered that E. H. L., Esquire, coroner and attorney  
 } of our present Sovereign Lady the Queen, in the court of our  
 said Lady the Queen before the Queen herself, who for our said Lady the  
 Queen in this behalf prosecuteth, in his own proper person cometh here  
 into the court of our said Lady the Queen before the Queen herself at West-  
 minster, on —, the twenty-second day of November in this same term,  
 and for our said Lady the Queen giveth the court here to understand and be  
 informed, That heretofore and before the committing of the several offences  
 by one B. G. hereafter mentioned, to wit, on the 1st day of January, in the  
 year of our Lord 1819, G. S. C., commonly called Marquis of B., being then  
 sole and unmarried, was lawfully married to Jane daughter of G., Earl of  
 G., and had afterwards, and before the committing the said several offences,  
 to wit, at Westminster, in the county of Middlesex, divers children by the  
 said Jane his wife, and among others J. W. S. C., commonly called Earl of  
 S., his eldest son, who as such eldest son on the death of the survivor of the  
 most noble G., Duke of M., (the father of the said G. S. C.), and the said  
 G. S. C. will be entitled to the dukedom of M., and the honors and dignities  
 appertaining thereto, and to enjoy the benefit of certain hereditaments, lands,  
 and tenements of great annual value, to wit, of the annual value of twenty  
 thousand pounds, to wit, at Westminster aforesaid, in the county aforesaid.  
 And the said coroner and attorney of our said Lady the Queen, for our said  
 Lady the Queen, further giveth the court here to understand and be informed  
 that \*B. G., late of Westminster aforesaid, in the county aforesaid, [\*270]  
 gent., well knowing the premises but contriving and intending to  
 injure and aggrieve the said G. S. C., in his good name, fame and credit,  
 and to cause it to be suspected and believed that the said marriage of the said  
 G. S. C. with the said Jane his wife was void and invalid, and that the said  
 G. S. C. had before such his marriage married and taken to wife a certain  
 other woman, who at the time he the said G. S. C. intermarried with the said  
 Jane as aforesaid was living [and further contriving to injure and aggrieve

the said Jane the wife of the said G. S. C. in her good name, fame, and credit,] and further contriving to injure and aggrieve the said J. W. S. C., and to cause it to be suspected and believed that he was a bastard, and as such would not as aforesaid be entitled to the said dukedom, or the honors or dignities appertaining thereunto, or to enjoy the said benefit of the said hereditaments, lands and tenements, or any of them, or any part thereof, heretofore, to wit, on the 15th day of July, in the year of our Lord, 1838, with force and arms at Westminster aforesaid, in the county aforesaid, unlawfully, falsely, wickedly, and maliciously did print and publish, and cause and procure to be printed and published in a certain public newspaper, to wit, a newspaper called "The Satirist, or the Censor of the Times," a certain false, wicked, and malicious libel of and concerning the said G. S. C., and of and concerning the said marriage of the said G. S. C. with the said Jane his wife, [and of and concerning the said Jane,] and of and concerning the said J. W. S. C., and of and concerning the legitimacy of the said J. W. S. C., which said false, wicked, and malicious libel is to the tenor and effect following (that is to say):—A question of legitimacy. A very curious question is on the tapis of litigation, turning upon the validity of a marriage by recognition and admission in Scotland. The facts are these: Some twenty years back the Marquis of B. (meaning the said G. S. C.) eloped with a lady (meaning such other woman as aforesaid) the daughter of a wealthy merchant from Ireland, with whom he (meaning the said G. S. C.) lived for several years, some part of the time in Scotland, where she was received into society as his (meaning the said G. S. C.'s) wife. By this lady he (meaning the said G. S. C.) had a daughter now living and married to a gentleman of fortune. It is a fact not generally known that the dukedom of M., by a special act of Parliament passed on the death of the son of the first duke, on failure of male issue is continued in the female line, and that therefore the daughter to whom we have

[\*271] alluded, assuming the Scotch contract to amount, which it does, to a valid marriage, will on the death of the present Marquis of B. (meaning the said G. S. C.) and his father (meaning the said G. Duke of M.) take the title of Duchess of M., with succession to her eldest son. But this depends on the construction of the act to which we have referred, and which forms the ground-work of a portion of the litigatory proceedings in course of commencement. The first step is to establish the validity of the Scotch marriage; that being done, and about which there can exist no manner of doubt, the next question that arises is as to the act of Parliament, how far that goes to sustain the claim set up by the husband of the daughter of the Marquis of B. (meaning the said G. S. C.) One thing is quite clear, that the confirmation of the marriage in Scotland invalidates the marriage of the Marquis with the daughter of the Earl of G. (meaning the marriage of the said G. S. C. to the said Jane in the introductory part of this information mentioned) and bastardizes the offspring of that marriage (meaning among others the said J. W. S. C.) There is a novelty about the case which must create much curiosity, and an interest in correspondence with the weight and character of the parties engaged in the proceedings. As regards the Marquis of B. (meaning the said G. S. C.) he has no sort of claim to our sympathy. We pity him not, but we should disguise our feelings if we did not say we pity the Marchioness (meaning the said Jane the

wife of the said G. S. C.), who, should the Scotch marriage be sustainable, will be placed in a most distressing position, not only as regards herself but as relates to her children, the whole of whom (meaning among others the said J. W. S. C.) will come under the ban of illegitimacy. To the great damage, scandal, and disgrace of the said G. S. C. [and of the said Jane his wife and of the said J. W. S. C.,] to the evil example of all others in the like case offending, and against the peace of our said Lady the Queen, her crown, and dignity.

*2nd Count.*—And the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen, further giveth the court here to understand and be informed, That the said B. G. further contriving and intending as aforesaid heretofore, to wit, on the 22nd day of July, in the year aforesaid, with force and arms at Westminster aforesaid, in the county aforesaid, unlawfully, falsely, wickedly, and maliciously did print and publish, and cause and procure to be printed and published in a certain other public newspaper, to wit, a newspaper called “The Satirist or The Censor of the Times,” a certain other false, wicked, and \*malicious libel of and concerning the said G. S. C., and of and concerning his marriage [\*272] with the said Jane his wife [and of and concerning the said Jane,] and of and concerning a certain other marriage, in and by the said libel assumed to have been had by and between the said G. S. C. and a certain other woman before his said marriage with the said Jane his wife [and of and concerning the said J. W. S. C.,] and of and concerning the legitimacy of the said J. W. S. C., which said libel is to the tenor and effect following (that is to say):—We are asked by a correspondent and subscriber to state our grounds of belief in the story concerning the Marquis of B. (meaning the said G. S. C.) and his double marriage. To this we can have no objection. One proof of the circumstance rests upon the fact of the first wife being still alive, and who, when living with the Marquis (meaning the said G. S. C.) in Scotland, was introduced by him (meaning the said G. S. C.) to, and was received as his wife by, the Marquis of B——, Sir W. E. and Sir T. J. The validity of the marriage (meaning the said marriage so assumed to have been had by and between the said G. S. C. and the said other woman, before his said marriage with the said Jane his wife) cannot be questioned. It is as good as if the parties had gone through the ceremonial in an English church, and being legal it renders the second marriage (meaning the said marriage of the said G. S. C. with the said Jane his wife) a mere nullity. Do not proofs like these form “strong grounds of belief” in the “story” relating to the “double marriage?” To the great damage, scandal, and disgrace of the said G. S. C. [and of the said Jane his wife and of the said J. W. S. C.,] to the evil example of all others in the like case offending, and against the peace of our said Lady the Queen, her crown, and dignity.

*3rd Count.*—And the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen, further giveth the court here to understand and be informed, That the said B. G. further contriving and intending to injure, prejudice, and aggrieve the said G. S. C., and to bring him into public scandal and disgrace, and to cause it to be suspected and believed that he had acted basely and in an unworthy manner to the said Jane his wife, and had threatened and intended to degrade and repudiate her as such his wife, and to endeavour to cause it to be suspected and believed that the

said J. W. S. C. and his said other children by her were illegitimate and bastards, heretofore, to wit, on the 29th day of July, in the year aforesaid, [\*273] with force and arms, at Westminster aforesaid, in the county \*aforesaid, unlawfully, falsely, wickedly, and maliciously did print and publish, and cause and procure to be printed and published in a certain other public newspaper, to wit, a newspaper called "The Satirist, or the Censor of the Times," a certain other false, wicked, and malicious libel of and concerning the said G. S. C., and of and concerning the said Jane his wife, and their marriage, and of and concerning the said J. W. S. C., and the said other children of the said G. S. C. and the said Jane his wife, and the legitimacy of the said J. W. S. C. and the said other children, which said last-mentioned libel is to the tenor and effect following (that is to say):—*Lex*. Pooh! The Marquis (meaning the said G. S. C.) must be really very weak to attack us on a point of accusation emanating from himself. Has he (meaning the said G. S. C.) never on his own part threatened a "blow up" of the whole affair; to repudiate the Marchioness (meaning the said Jane) and bastardize his children (meaning the said G. S. C.'s children by the said Jane his wife, and among others the said J. W. S. C.) If he (meaning the said G. S. C.) will deny that he ever did this; that he (meaning the said G. S. C.) ever threatened the family of his lady (meaning the family of the said Jane, the said wife of the said G. S. C.) with an exposure to the world of all the facts, we shall be content to be branded as libeller. To the great damage, scandal, and disgrace of the said G. S. C., and of the said Jane his wife, and of the said J. W. S. C. To the evil example of all others in the like case offending, and against the peace of our said Lady the Queen, her crown, and dignity.

Whereupon the said corner and attorney of our said Lady the Queen, for our said Lady the Queen, prayeth the consideration of the court here in the premises, and that due process of law may be awarded against him the said B. G. in this behalf, to make him answer to our said Lady the Queen touching and concerning the premises aforesaid.

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#### No. 15.

Information for sending a Written Challenge to the Prosecutor, and afterwards posting him as a Coward. 2nd Count, for a Common Challenge—§ Chit. Crim. L. 853, 854.

Of ——— term, in the ——— year of Queen Victoria.

*Kent.* } Be it remembered, That Charles Francis Robinson, Esquire, coroner  
 } and attorney of our present Sovereign Lady the Queen in the court  
 of our said Lady the \*Queen before the Queen herself, who for our  
 [\*274] said Lady the Queen in this behalf prosecuteth, in his own proper  
 person cometh here into the court of our said Lady the Queen before the  
 Queen herself at Westminster, on Tuesday the ——— day of ———, in this  
 same term, and for our said Lady the Queen giveth the court here to  
 understand and be informed that Joseph Styles, late of the parish of ———,  
 in the county of Kent, Esq., being a person of turbulent and quarrel-  
 some temper and disposition, and contriving and intending, not only to  
 vex, injure, and disquiet one John Nokes, and to do the said J. N. great  
 bodily harm; but also to provoke, instigate, and excite the said J. N. to

break the peace and to fight a duel with and against him the said J. S. heretofore, to wit, on the — day of —, in the — year of the reign of our Sovereign Lady Victoria, with force and arms, at the parish aforesaid, in the county aforesaid, wickedly, wilfully, and maliciously did write, send, and deliver, and cause and procure to be written, sent, and delivered unto him the said J. N. a certain letter and paper writing containing a challenge to fight a duel with and against him the said J. S., and which said letter and paper writing is as follows, that is to say [*here set out the challenge verbatim, with such innuendos as may be necessary and proper ;*] and the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen, further giveth the court here to understand and be informed that the said J. N., having then and there refused to fight with and against him the said J. S. in pursuance of such unlawful, wicked, and malicious challenge as aforesaid, he the said J. S. further contriving and intending as aforesaid, afterwards, to wit, on the — day of —, in the year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully, wickedly, and maliciously did stick up, place, and expose to public view, and cause and procure to be stuck up, placed, and exposed to public view, to wit, upon and against a certain sign-post of and belonging to a certain public inn, there called and known by the name and sign of The King's Head, a certain paper-writing, with the name of him the said J. S. thereunto subscribed, containing certain scurrilous and abusive matter of and concerning him the said J. N., which said paper-writing is as follows, that is to say : In consequence of an anonymous letter received by me (meaning himself the said J. S.) which I (meaning himself the said J. S.) have reason to believe was written by J. N. (meaning the said John Nokes,) I meaning myself the said J. S.) have sent him (meaning the said J. N.) a challenge, hoping for satisfaction \*suitable to a gentleman, which he (meaning the said J. N.) has refused ; therefore, I meaning myself the said [\*275] J. S.) now post him (meaning the said J. N.) as a coward.—Joseph Styles, Dec. 13th, 1841 ;—to the great damage, scandal, and disgrace of the said J. N. in contempt of our said Lady the Queen and her laws, to the evil example of all others in like case offending, and against the peace of our said Lady the Queen, her crown, and dignity.

*2nd Count.*—And the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen, further giveth the court here to understand and be informed that the said J. S. contriving and intending as aforesaid, afterwards, to wit, on the day and year [first] aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, wickedly, wilfully, and maliciously did provoke, instigate, excite, and challenge the said J. N. to fight a duel with and against him the said J. S. ; to the great damage, scandal, and disgrace of the said, J. N., in contempt of our said Lady the Queen and her laws, to the evil example of all others in like case offending, and against the peace of our said Lady the Queen, her Crown and dignity.

Whereupon the said coroner and attorney for our said Lady the Queen, for our said Lady the Queen, prayeth the consideration of the court here in the premises, and that due process of law may be awarded against him the said Joseph Styles, in this behalf, to make him answer to our said Lady the Queen touching and concerning the premises aforesaid.

## No. 16.

Information for delivering a Challenge from J. S. to J. N.

Of — Term, in the — year of Queen Victoria.

Sussex. } BE it remembered, that Charles Francis Robinson, Esquire,  
 { coroner and attorney of our present Sovereign Lady the Queen,  
 in the court of our said Lady the Queen before the Queen herself, who for  
 our said Lady the Queen in this behalf prosecuteth, in his own proper  
 person, cometh here into the court of our said Lady the Queen before  
 the queen herself at Westminster, on Monday, the — day of —, in  
 this said term, and for our said Lady the Queen giveth the court here to  
 understand and be informed, that W. J., late of the parish of —, in  
 [\*276] the county of Sussex, gentleman, contriving and intending \*not only to  
 vex, injure, and disquiet one J. N., and to procure great bodily harm to be done  
 to him the said J. N., but also to provoke, instigate, and excite the said J.  
 N. to break the peace and to fight a duel with and against one J. S., here-  
 tofore, to wit, on the — day of —, in the — year of the reign of our  
 Sovereign Lady Victoria, with force and arms, at the parish aforesaid, in  
 the county aforesaid, wickedly, wilfully, and maliciously did deliver and  
 cause to be delivered unto him, the said J. N., a certain letter and paper-  
 writing containing a challenge of and from the said J. S. to the said J. N.,  
 to fight a duel with and against the said J. S., and which said letter and  
 paper writing is as follows, that is to say [*here set out the challenge  
 verbatim, with such innuendoes as may be necessary and proper* ;] to the  
 great damage, scandal, and disgrace of the said J. N., in contempt of our  
 said Lady the Queen and her laws, to the evil example of all others in like  
 case offending, and against the peace of our said Lady the Queen, her crown,  
 and dignity.

2nd Count.—And the said coroner and attorney of our said Lady the  
 Queen, for our said Lady the Queen, further giveth the court here to  
 understand and be informed that the said W. J. contriving and intending  
 as aforesaid, afterwards, to wit, on the day and year aforesaid, with force  
 and arms, at the parish aforesaid, in the county aforesaid, wickedly, wilfully,  
 and maliciously did deliver, and cause to be delivered, unto him the said J.  
 N. a certain written challenge *as from and on the part and by the desire  
 of the said J. S.* to the said J. N. to fight a duel with and against the said  
 J. S., and which said written challenge is as follows, that is to say [*here set  
 out the challenge verbatim, with proper innuendoes as before* ;] to the  
 great damage, scandal, and disgrace of the said J. N., in contempt of our  
 said Lady the Queen and her laws, to the evil example of all others in like  
 case offending, and against the peace of our said Lady the Queen, her crown  
 and dignity.

3rd Count.—And the said coroner and attorney of our said Lady the  
 Queen, for our said Lady the Queen, further giveth the court here to  
 understand and be informed that the said W. J., contriving and intending  
 as aforesaid, afterwards, to wit, on the day and year aforesaid, with force  
 and arms, at the parish aforesaid, in the county aforesaid, wickedly, wilfully,

and maliciously did provoke and incite the said J. N. to fight a duel with and against the said J. S.; to the great damage, scandal and disgrace of the said J. N., in contempt of our said Lady the Queen and her laws, to the evil example of all others in like case \*offending, and against the peace of our said Lady the Queen, her crown and dignity. [\*277]

Whereupon the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen, prayeth the consideration of the court here in the premises, and that due process of law may be awarded against him the said W. J. in this behalf, to make him answer to our said Lady the Queen touching and concerning the premises aforesaid.

For a reference to other forms of informations for sending, or giving, or delivering a challenge, see post, 282, tit. "*Offences against the public peace.*"

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No. 17.

Information against a Magistrate for causing a person to be imprisoned for want of Bail, in a matter not cognizable before him, and causing him to be kept in close Confinement without Pen, Ink, or Paper, or the Sight of any Friend. (See 2 Chit. Crim. L. 236; Cro. C. C. 272; Arch. Pl. & Ev. C. C. 576, 8th ed.)

Of — term, in the — year of Queen Victoria.

*Surrey.* } Be it remembered that Charles Francis Robinson, Esquire,  
 } coroner and attorney of our present Sovereign Lady the Queen,  
 in the court of our said Lady the Queen before the Queen herself, who  
 for our said Lady the Queen in this behalf prosecuteth, in his own proper  
 person cometh here into the court of our said Lady the Queen, before the  
 Queen herself, at Westminster, on Tuesday the — day of —, in this  
 same term, and for our said Lady the Queen, giveth the Court here to  
 understand and be informed that one Joseph Styles, Esquire, on the 13th  
 day of October, in the — year of the reign of our Lady the now Queen,  
 and long before, was and from thence hitherto hath been and still is one of  
 the justices of our said Lady the Queen, assigned to keep the peace of our  
 said Lady the Queen, in and for the said county of Surrey, and also to hear  
 and determine divers felonies, trespasses and other misdemeanors, in the  
 said county committed, to wit, in the parish of B., in the county aforesaid;  
 and the said coroner and attorney of our said Lady the Queen, for our said  
 Lady the Queen, further giveth the court here to understand and be  
 informed, that on the 13th day of October, in the \*said — year  
 of the reign of our said Lady the Queen, at the parish aforesaid, in [\*278]  
 the county aforesaid, one A. B., then being one of the constables of the  
 said parish, brought one John Nokes before the said Joseph Styles, then and  
 yet being such justice aforesaid, and the said John Nokes was then and  
 there charged before the said Joseph Styles with having committed a certain  
 supposed misdemeanor in having vilified the character and hurt the trade  
 of one W. D., of the parish aforesaid, in the county aforesaid, miller, and  
 the said John Nokes was then and there examined before the said Joseph  
 Styles, as such justice as aforesaid, touching the said supposed offence so on

him charged as aforesaid; and the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen, further giveth the court here to understand and be informed that the said Joseph Styles, late of the parish aforesaid, in the county aforesaid, Esquire, being such justice as aforesaid, wickedly and maliciously contriving and intending to oppress, injure and aggrieve the said John Nokes, in this behalf, and to put him to great charge and expense, and to cause him to undergo and suffer great pain, torture, and anguish of body and mind, afterwards, to wit, on the day and year aforesaid, at the parish aforesaid in the county aforesaid, did order and direct that the said John Nokes should find sureties for his personal appearance at the then next general quarter sessions of the peace of our said Lady the Queen, to be holden in and for the said county of S., to answer the said charge; and because the said John Nokes did not, and could not conveniently find such sureties as aforesaid, he the said John Styles, being such justice as aforesaid, wickedly and maliciously contriving and intending as aforesaid, wrongfully, unjustly, and maliciously, and contrary to the laws of this realm, then and there (by virtue and under colour of a certain warrant under his hand and seal as such justice as aforesaid) committed the said John Nokes a prisoner to a certain prison called the house of correction, situate at [the parish aforesaid,] in the county aforesaid, to be there safely kept until he the said John Nokes should find such sureties as aforesaid, and until he should be further examined concerning the premises, and then and there ordered, directed, and commanded the then keeper of the said prison, to keep the said John Nokes under close confinement in the said prison, and to deny him the use of pen, ink, and paper, and to allow no letter to be delivered to or from the said John Nokes, and also to allow no person to see or speak to the said John Nokes: and the said coroner and [279] attorney of our said Lady the Queen, for our said Lady the Queen, \*further giveth the court here to understand and be informed that the said Joseph Styles, being such justice as aforesaid, by virtue and under colour of the said warrant, afterwards, to wit, on the day and year aforesaid, and from thence, for a long space of time, to wit, for the space of ten days then next following, at the parish aforesaid, in the county aforesaid, wrongfully, unjustly, and maliciously, and contrary to the laws of this realm, did cause and procure the said John Nokes to be closely confined and imprisoned in the said prison, and to be debarred, denied, and restrained from the use of pen, ink, and paper, and to be restrained from all communication with his relations and friends, to wit at the parish aforesaid, and the county aforesaid; whereby the said John Nokes, during all that time, underwent and suffered great pain, torture, and anguish of body and mind, and was deprived of his liberty and prevented from finding such sureties as aforesaid, and was put to great charge and expense in and about obtaining his discharge and release from the said confinement and imprisonment; to the great scandal of the administration of justice in this kingdom, in contempt of our said Lady the Queen and the laws and customs of this realm, in great violation of all the liberties, rights and privileges of her Majesty's subjects, to the evil and pernicious example of all others in like case offending, and against the peace of our said lady the Queen, her crown and dignity. Whereupon the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen, prayeth the consideration of the court



here in the premises, and that due process of law may be awarded against him the said Joseph Styles, in this behalf, to make him answer to our said Lady the Queen touching and concerning the premises aforesaid.

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No. 18.

Other Criminal Informations by the Attorney-General *ex officio*, viz :

For a misdemeanor at common law for forging an indorsement on a paper writing or certificate in the name of the Duke of Buckingham, touching a quantity of alum charged to the Duke's account, (filed by order of the House of Lords,) *Rex v. Ward, Esq., 2 Ld. Raym. 1461 ; 3 Id. 538 : Cro. C. C. 259.*

For a riot and disturbance of commissioners acting under the property tax acts, *2 Chit. Crim. L. 490.*

\*For insulting and vilifying them whilst in the execution of their duty, *3 Chit. Crim. L. 916.* [\*280]

For a riot and conspiracy in the King's Bench prison, and attempting to blow up the wall thereof with gunpowder, in 1785, *3 Chit. Crim. L. 1150 ; Cro. C. C. 464.*

For a riot and breaking open the house of the ambassador from the Duke of Savoy, and taking from thence divers goods, *2 Chit. Crim. L. 58.*

For publishing a blasphemous libel, viz., the third part of Paine's *Age of Reason*, *2 Chit. Crim. L. 14.*

Against the printer of a newspaper, for publishing an advertisement by a married woman offering to become a kept mistress, *3 Chit. Crim. L. 887.*

For a seditious libel, in the shape of resolutions at a public meeting for a subscription "to be applied to the relief of the widows, orphans, and aged parents of our beloved American fellow-subjects, who, faithful to the character of Englishmen, preferring death to slavery, were for that reason inhumanly murdered by the King's troops at Lexington and Concord, in the province of Massachusetts, on the 19th of last April." (*Rex v. Horne, Cowp. 672 ; Cro. C. C. 294 ; Arch. Pl. & Ev. C. C. 518, 8th ed.*)

For a seditious libel against the King's government and troops, in the shape of an address to the electors of Westminster, *Rex v. Sir Francis Burdett, Bart., 4 B. & A. 115, note.*

For a libel on the royal family, *2 Chit. Crim. L. 88.*

For a libel on the prince regent, *3 Chit. Crim. L. 882.*

For a libel in French on Bonaparte, the then Chief Consul, tending to create discord between this country and France, *2 Chit. Crim. L. 52.*

For a libel on the Russian ambassador, accusing him of having sent advice to the enemies of this country, *4 Went. Prec. 410 ; 2 Chit. Crim. L. 54 ; 3 Id. 882.*

For a libel on the Chief Justice and the rest of the judges of the Court of King's Bench, imputing that they had acted arbitrarily, partially, and corruptly in admitting one John Hill to bail upon a writ of habeas corpus, *4 Went. Prec. 414 ; 3 Chit. Crim. L. 878.*

Against a pilot for breach of quarantine, *2 Chit. Crim. L. 551.*

For aiding a prisoner of war to escape, *Cro. C. C. 534.*

For obstructing excise officers in the execution of their duties, 4 Went. Prec. 375 to 385; Id. 392 to 407; Id. 437; 2 Chit. Crim. L. 127 to 141.

For obstructing custom-house officers in the execution of their duties, 4 Went. Prec. 385 to 391.

\*For offering to bribe custom-house officers to give up and to [281] refrain from seizing goods forfeited on 24 Geo. 3, 3 Chit. Crim. L. 693; Id. 695.

Against a custom-house officer for corruptly taking a bribe and giving up goods forfeited, 3 Chit. Crim. L. 689.

Against an officer for receiving presents in India, contrary to the statute 33 Geo. 3, c. 52, s. 62, 3 Chit. Crim. L. 697.

Against traders and others, for violating or attempting to evade the provisions of various acts of Parliament, or relating to trade, &c., 4 Went. Prec. 437 to 546.

Other Criminal Informations by the Master of the Crown Office, viz.

*For Libels.*—For publishing a libel against three justices of the peace and the churchwardens and overseers of a parish, accusing them of having been guilty of fraud concerning the poor's rates, 3 Chit. Crim. L. 898; 4 Went. Prec. 407.

For a libel on a barrister, connected with his conduct of a cause, 3 Chit. Crim. L. 884.

For a libel on Messrs. Goldsmid charging them with having exported gold to Holland whilst under the government of the French, and at war with this country, discounting foreign bills for that purpose, *Rex v. Murphy*, 6 Went. Prec. 449.

For singing before the door of Daniel Cooke, a grocer, at Cheltenham, two libellous songs, reflecting on the honesty and virtue of his son and daughter, with intent to discredit him and his children, and to disturb their domestic peace and comfort, *Rex v. Benfield*, 2 Burr. 980.

*Against Magistrates.*—For refusing to grant licenses to sell ale to inn-keepers or publicans from partial and corrupt motives, 4 Went. Prec. 364; 2 Chit. Crim. L. 253.

For improperly granting an alehouse license after the same had been refused by the magistrates at general sessions, 2 Chit. Crim. L. 249; 6 Went. Prec. 455; *Rex v. Sainsbury*, 4 T. R. 451.

For causing a young woman to be publicly whipped as a disorderly person, without any view, information, or proof exhibited against her, 2 Chit. Crim. L. 236; *Cro. C. C.* 274.

For knowingly taking insufficient sureties for the appearance of a person charged with seducing manufacturers \*to go into foreign parts, [282] without notice to the committing justice, 2 Chit. Crim. L. 244; 4 Went. Prec. 418.

For illegally discharging a person committed under the Vagrant Act by another magistrate, 2 Chit. Crim. L. 239; 4 Went. Prec. 424.

**Bribery.**—For bribery at an election of mayor of a corporation, *Rex v. Plympton*, 2 *Ld. Raym.* 1377.

For attempting to bribe a First Lord of the Treasury in order to procure the reversion of an office in Jamaica, 3 *Chit. Crim. L.* 683; *Cro. C. C.* 502.

For attempting to bribe a constable not to execute a warrant against one D. F., (indictment,) *Arch. Pl. & Ev. C. C.* 573, 8th ed.

**Offences against Public Justice.**—For compounding a *qui tam* action (which had been commenced in K. B. on the 31 *Eliz.*, c. 6, s. 8, for corruptly resigning a benefice,) without leave of the court, on 18 *Eliz.* 3 5, 2 *Chit. Crim. L.* 223; *Cro. C. C.* 137; *Arch. Pl. & Ev. C. C.* 579, 8th ed.

Against a gaoler, for extortion in his office, and permitting an escape, 2 *Chit. Crim. L.* 297.

For conspiracy in the nature of embracery to procure a false verdict, one of the defendants getting himself sworn as a talesman on the jury, *Cro. C. C.* 153; *Rex v. Opie and Others*, 1 *Saund.* 300 *b.*

**Offences against the Public Peace.**—For a conspiracy to disturb a dissenting congregation, 2 *Chit. Crim. L.* 29.

For a riotous assembly with cutlasses, &c., breaking into a room, part of a warehouse, making a noise therein, and assaulting divers persons there, and beating and wounding them, and breaking to pieces the furniture, &c., 2 *Chit. Crim. L.* 502.

For sending or delivering challenges, whether in writing or verbally, 3 *Chit. Crim. L.* 848 to 862.

For challenging a magistrate, 6 *Went. Prec.* 461; 3 *Chit. Crim. L.* 850.

Against a magistrate for challenging another magistrate, *Cro. C. C.* 121; 3 *Chit. Crim. L.* 855.

**Offences against Public Trade.**—For a conspiracy to raise the price of salt, *Cro. C. C.* 150; 3 *Chit. Crim. L.* 1164.

For spreading rumours respecting hops, with intent to raise the price in the market, and to prevent the dealers from selling, &c., *Rex v. Waddington*, 1 *East*, 143; 2 *Chit. Crim. L.* 527.

\*For forestalling, regrating, and engrossing, (indictments,) *Arch.* [\*283] *Pl. & Ev. C. C.* 613, 8th ed.

For a conspiracy to ruin gunmakers in their trade, making riots before their house and shop, seducing their workmen to leave their employ, making declarations of ill-will towards them, threatening bodily injury to their agent, and attempting to do him bodily harm, 6 *Went. Prec.* 439.

For a conspiracy to ruin a player in his profession, by making a riot in Covent Garden Theatre, preventing the performance of a play in which he was to act, and obliging the manager against his will to come on the stage and discharge him, 6 *Went. Prec.* 443; 2 *Chit. Crim. L.* 494.

## No. 19.

## Subpoena to answer a Criminal Information.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To J. S.—We command you, that laying aside all excuses and pretences whatsoever, you be and appear in our court, before us, at Westminster, on —, to answer to us of such matters and things as shall then and there be objected against you on our behalf; and further do and receive all those things which our said court shall then order concerning you; and this you are not to omit under the penalty of one hundred pounds to be levied upon your goods and chattels, lands and tenements, if you shall make default in the premises. Witness, Thomas Lord Denman, at Westminster, the — day of —, in the — year of our reign.

By the Court,  
ROBINSON.

## (Indorsement.)

Charles Francis Robinson, Esq., coroner and attorney of our Lady the Queen, in the court of our said Lady the Queen, before the Queen herself, for our said Lady the Queen prosecuteth this writ against the within-named J. S., upon an information exhibited against him by the said Charles Francis Robinson in the said court for certain misdemeanors.

[\*284] \*(Indorsement where the Information is filed by the Attorney-General, ex officio.)

Sir Frederick Pollock, Knt., Attorney-General of our Lady the Queen, for our said Lady the Queen prosecuteth this writ against the within-named J. S., upon an information exhibited against him by the said Attorney-General in the court of our said Lady the Queen, before the Queen herself, for certain misdemeanors.

## No. 20.

## Affidavit of Service of Subpoena.

In the Queen's Bench.

*Yorkshire*.—The Queen against J. S.

I. K., Clerk to J. C., of &c., gentleman, maketh oath and saith, that he, this deponent, did on the — day of — instant, personally (a) serve J. S.,

(a) If the service was not *personal*, (which is unnecessary,) the form of affidavit will be as follows:

"That he, this deponent, did, on &c., serve J. S., of &c., merchant, the above-named defendant, with a true copy of the writ of subpoena hereunto annexed, and of the indorse-

of —, [merchant], the above named defendant, with a true copy of the writ of subpœna hereunto annexed, and of the indorsement thereon, and that he this deponent did at the same time shew to the said J. S. the said original writ of subpœna and indorsement.

Sworn, &c.

I. K.

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\*No. 21.

[\*285]

Another Form of Affidavit of Service of Subpœna (not annexing the Writ to the Affidavit.)

In the Queen's Bench.

*Kent.*—The Queen against J. S.

I. K., clerk to J. C., of &c., gentleman, maketh oath and saith, that he, this deponent did on the — day of — instant, personally serve J. S. of —, [merchant], the above-named defendant, with a true copy of the writ of subpœna in this prosecution, and of the indorsement thereon, which said writ of subpœna appeared to this deponent to be regularly issued out of and under the seal of this honourable court; and a true copy of which said writ of subpœna, and of the indorsement thereon is hereunto annexed. [*If the service was not personal, omit the word "personally," and go on thus.*] "by delivering such first-mentioned true copy of the said writ and indorsement to, and leaving the same with, the [wife, or son, or servant, as the case may be,] of the said J. S., at his place of residence, situate at —; and that he, this deponent, did at the same time shew to the said [wife, &c.] of the said J. S. the said original writ of subpœna and indorsement.

Sworn, &c.

I. K.

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No. 22.

Attachment for not appearing to a Criminal Information.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the Sheriff of —, greeting:— We command you, that you do not forbear by reason of any liberty in your bailiwick, but that you attach J. S., so that you may have his body before us, at Westminster, on —, to answer to us concerning certain misdemeanors whereof he is impeached; and have you then and there this writ. Witness, Thomas Lord Denman, at Westminster, the — day of —, in the — year of our reign.

By the Court,

ROBINSON.

ment thereon, by delivering such true copy to and leaving the same with the wife [or son, or servant, &c.,] of the said J. S., at his place of residence, situate at —; and that he, this deponent, did at the same time shew to the said [wife, &c.] of the said J. S. the said original writ of subpœna and indorsement.

[\*286]

\*No. 23.

Notice to Defendant to appear and plead to an Information pursuant to the terms of an enlarged Rule, otherwise an Attachment &c. (See ante, 73.)

In the Queen's Bench.

The Queen against J. S., upon an Information for certain misdemeanors.

TAKE NOTICE that the information in this prosecution was filed this day [or on the — day of —, instant], and that unless the defendant shall appear thereto immediately, and plead within four days of the date hereof, according to his undertaking in the rule made in this prosecution, on — in the last term, (a) That her Majesty's Court of Queen's Bench will be moved on — next, or so soon after as counsel can be heard for a writ of attachment against the defendant for his contempt. Dated this — day of —, 18—.

Yours, &c.

J. C.,

Solicitor for the prosecutor.

To J. S., the defendant, and to  
Mr. C. D., his solicitor.

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No. 24.

Notice to Defendant (in Custody) to appear and plead to an Information pursuant to the terms of an enlarged Rule, otherwise an Appearance and Judgment by Default, &c. (See ante, 74.)

In the Queen's Bench.

The Queen against J. S., upon an Information for certain misdemeanors.

TAKE NOTICE that the information on this prosecution was filed this day [or on the — day of — instant] and that unless the defendant shall appear thereto immediately, and plead within four days from the date hereof, according to his undertaking in the rule made in this prosecution, on —, [\*287] in the last term, (a) an appearance will \*be entered for the said defendant, and judgment signed against him for want of a plea. Dated this — day of —, 18—.

Yours, &c.,

J. C.,

Solicitor for the prosecutor.

To J. S., the defendant, and to  
Mr. C. D. his solicitor.

(a) Sometimes a copy is annexed and referred to thus, "a true copy whereof is hereunto annexed," or "above written," &c., as the case may be.

## No. 25.

## Affidavit of Service of Notice.

In the Queen's Bench.

The Queen against J. S., upon an Information for certain misdemeanors.

O. P., clerk to J. C., of &c., the solicitor for the prosecutor of this information maketh oath and saith, that he, this deponent, did, on the — day of — instant, [personally] serve Mr. C. D., the solicitor for the defendant in this prosecution, with the notice of which a true copy is hereto annexed. [If the service were not personal, omit the word "personally" and say "by delivering such notice to, and leaving the same with a clerk [or female servant, &c.] of the said C. D., at his chambers [or dwelling-house] situate —.

Sworn, &amp;c.

O. P.

## No. 26.

Notice (with Copy Information) to be served on Defendant in Custody pursuant to 48 Geo. 3, c. 58.(a)

In the Queen's Bench.

The Queen against J. S.

TAKE NOTICE that unless you shall, within the space of eight days next after the delivery hereof, cause an appearance and plea or demurrer to be entered in the Court of \*Queen's Bench to this information, an appearance and plea of not guilty will be entered thereto in your [\*288] name, pursuant to the statute in such cases made and provided [and the issue to be joined thereon will be tried at the next assizes to be holden in and for the county of — (b).] Dated this — day of —, 18—.

Yours, &amp;c.,

J. C.,

Solicitor for the prosecutor.

To Mr. J. S., the defendant.

## No. 27.

Affidavit of Service of Notice with Copy of Information pursuant to 48 Geo. 3, c. 58.

In the Queen's Bench.

The Queen against J. S.

J. C., of &amp;c., Gent., maketh oath and saith, that he did, on the — day

(a) The defendant must be detained in custody upon this prosecution, (ante, 77,) otherwise he must be brought up by habeas corpus and "charged with the information." (Ante, 74.)

(b) Annex to the affidavit a copy of the information.

of — instant, deliver to the above-named defendant J. S., who was then a prisoner in Her Majesty's gaol at —, a copy of the paper-writing hereto annexed (a) with an indorsement thereon to the tenor following (that is to say) [*copy the notice verbatim.*]

Sworn, &c.

J. C.

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No. 28.

Judgment for want of a Plea to a Criminal Information.

AND now, that is to say, on — in this same term, before our said Lady the Queen, at Westminster, cometh the said J. S. in his proper person, and having heard the said information read, he prayeth a day to answer thereunto, until on [Friday &c.,] and it is granted to him before our said Lady the Queen, at Westminster, the same day is given as well to the said Charles Francis Robinson, who prosecuteth for our said Lady the Queen in this behalf, as to the \*said J. S. On which said [Friday, &c.,] before [\*289] our said Lady the Queen at Westminster, cometh the said C. F. R., who for our said Lady the Queen in this behalf prosecuteth in his proper person. And the said J. S. upon the fourth day of pleading, although being solemnly called to answer, doth not come, nor doth he say anything in bar or in abatement of the said information, nor doth he in any manner answer to the said information, or to the premises in the said information specified, above charged upon him. Wherefore our said Lady the Queen remaineth against him the said J. S. without defence in this behalf; whereupon all and singular the premises being seen and fully understood by the court of our said Lady the Queen now here, it is considered and adjudged by the said court here, that he the said J. S. be convicted of the offences aforesaid, and that he be taken, and so forth.

N. B. The subsequent *final* judgment (after sentence pronounced) is as follows. —

And hereupon afterwards (to wit) on —, in this same term, before our said Lady the Queen, at Westminster, the said J. S. being present here in court [*or* "being brought here into court in custody of the sheriff of —, by virtue of a writ of habeas corpus," *or* "in custody of the keeper of the Queen's prison by virtue of a rule of this court," *as the case may be;*] It is considered and adjudged by the said court here that he the said J. S. for his offences aforesaid [*be fined or imprisoned, &c., as set forth in the judgment rule.*]

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No. 29.

Demurrer to a Criminal Information.—Joinder.—Cur. adv. vult.—Judgment for the Defendant; or for the Crown.

AND now, that is to say, on —, the — day of —, in this same term, before our said Lady the Queen at Westminster, cometh the said J.

(a) It is better to omit this and give notice of trial after issue joined. (2 Gude, 566.)



S., by —, his clerk in court, and having heard the said information read, he says that our said Lady the Queen ought not to impeach or implead him the said J. S., by reason of the premises in the said information above mentioned and specified, because he says that the said information and the matters therein contained are not sufficient in law, and that he need not nor is he obliged by the law of the land to answer thereto, and \*this he is ready to verify. Wherefore and because of the insufficiency of [\*290] the said information the said J. S. prays judgment, and that he may be dismissed and discharged by the court here, of and from the premises above charged upon him in form aforesaid.

*Joinder in Demurrer.*—And the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen, saith that the said information and the matters therein contained are sufficient in law, and this the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen, is ready to verify and prove as the court shall award. Wherefore, inasmuch as the said J. S. hath not answered to the said information, nor in anywise denied the matters therein contained, he the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen, prayeth judgment, and that the said J. S. may be convicted of the premises above charged upon him in the said information.

*Cur. ad. vult.*—And because the court of our said Lady the now Queen here is not yet advised about giving their judgment of and concerning the premises aforesaid, a day is therefore given as well to the said C. F. R., who for our said Lady the Queen in this behalf prosecuteth, as to the said J. S., until on [Monday, &c.] before our said Lady the Queen, wheresoever she shall then be in England, to hear their judgment thereupon, for that the said court of our said Lady the Queen now here is not as yet advised thereupon. At which time (to wit) on [Monday, &c.] before our said Lady the Queen at Westminster, come as well the said C. F. R., who for our said Lady the Queen in this behalf prosecuteth, as the said J. S. by his clerk in court aforesaid. And because the court of our said Lady the Queen now here is not as yet advised about giving their judgment of and concerning the premises aforesaid, a day is therefore further given, as well to the said C. F. R., who for our said Lady the Queen in this behalf prosecuteth, as to the said J. S., until on [Wednesday, &c.] before our said Lady the Queen, wheresoever she shall then be in England, to hear their judgment thereupon, for that the said court of our said Lady the Queen now here is not advised thereupon.

*Judgment.*—At which time (to wit) on [Wednesday, &c.] before our said Lady the Queen, at Westminster, come as well the said C. F. R., for our said Lady the Queen, in this behalf prosecuteth, as the said J. S. by his clerk in court aforesaid. Whereupon all and singular the \*pre-mises being seen and fully understood by the court of our said [\*291] Lady the Queen now here, upon mature deliberation thereupon had, it is considered and adjudged by the said court here,\* That the said information and the matters therein contained are *not* sufficient in law; it is thereupon considered and adjudged that the said J. S. be dismissed and discharged by the said court here, of and from the premises above charged upon him, and that he the said J. S. do depart hence without any day in this behalf.”  
*[If the judgment be for the Crown, the form (from the asterisk) is as*

*follows* :—"That the said information, and the matters therein contained, are sufficient in law; it is thereupon considered and adjudged that the said J. S. be convicted of the offences aforesaid, and that he be taken, and so forth."

*When sentence is pronounced upon the defendant, a final judgment is entered on the roll in the same manner and form as after a verdict or judgment by default. (See ante, No. 28; post, No. 53.)*

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No. 30.

Plea of "Not Guilty."

Of — term, in the — year of Queen Victoria.

J. S. } AND now (that is to say) on(a) —, the — day of —,  
 vs. } in this same term, before our said Lady the Queen at West-  
 The Queen. } minster, cometh the said J. S. by — his clerk in court [or "in  
 his own proper person,"] and having heard the said information read, he  
 saith that he is not guilty thereof. And hereupon he putteth himself upon  
 the country.

*Similiter.*]—And the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen, doth the like.

[\*292]

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\*No. 31.

Issue where the Information was filed in the same Term.

PLEAS before our Lady the Queen at Westminster, of [Hilary] Term, in the — year of the reign of our Sovereign Lady Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

Amongst the Pleas of the Queen, — Roll.

Surrey. } Be it remembered, That Charles Francis Robinson,  
 Esquire, coroner, and attorney of our present Sovereign  
 Lady the Queen, who for our said Lady the Queen in this  
 Amongst the In- } behalf prosecuteth, in his proper person cometh here into  
 formations of this } the court of our said Lady the Queen, before the Queen herself at West-  
 Term, No. — } minster, on [Friday, the 11th day of January] in this same term, and for  
 our said Lady the Queen bringeth into the court of our said Lady the  
 Queen, before the Queen herself now here, a certain information against J.  
 S., late of —, [gentleman,] which said information followeth in these  
 words (that is to say:) Surrey.—Be it remembered that [here copy the

(a) Usually the first day of the term in, or as of which the defendant pleads.

*information verbatim to the end, and then go on to award process thus :*] wherefore the sheriff of the said county of Surrey is commanded that he do not forbear, by reason of any liberty in his bailiwick, but that he cause him to come to answer to our said Lady the Queen touching and concerning the premises aforesaid.

And now (that is to say) on the same day [Friday, the 11th day of January,] in this same term, before our said Lady the Queen at Westminster, cometh the said J. S. by —, his clerk in court, and having heard the said information read, he saith that he is not guilty thereof; and hereupon he putteth himself upon the country. And the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen, doth the like; therefore let a jury thereupon come before our said Lady the Queen on(a) —, wheresoever she shall then be in England, by whom the truth of the matter may be the better known, and who are not of the kindred of the said J. S., to try upon their oath whether the said J. S. be guilty of the premises aforesaid or not; because as well the said C. F. R. who for our said \*Lady the Queen in this behalf prosecuteth, as the said J. S., have thereupon put themselves upon the same jury, [\*293] the same day is given as well to the said C. F. R. who for our said Lady the Queen in this behalf prosecuteth, as to the said J. S.

## No. 32.

Issue where the Information was filed in a previous Term.

PLEAS before our Lady the Queen at Westminster, of [Hilary] Term, in the — year of the reign of our Sovereign Lady Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

Amongst the pleas of the Queen, — Roll.

*Staffordshire.* } BE it remembered, That Charles Francis Robinson, Esquire, coroner and attorney of our present Sovereign Lady the Queen, who for our said Lady the Queen in this behalf prosecuteth, in his proper person came here into the court of our said Lady the Queen, before the Queen herself at Westminster, on [Tuesday the 2nd day of November in Michaelmas] term last past, and for our said Lady the Queen brought into the court of our said Lady the Queen before the Queen herself then there, a certain information against J. S., late of, — [gentleman,] which said information followeth in these words (that is to say :) Staffordshire.—Be it remembered [*here copy the information verbatim to the end, and then go on to state the award of process thus :*] wherefore the Sheriff of the said county of Stafford was commanded that he should not forbear by reason of any liberty in

Amongst the Informations of last Term, No. —.

(a) The return day of the venire; usually the last day of the term preceding the trial.

JULY, 1847.—4

his bailiwick, but that he should cause him to come to answer to our said Lady the Queen touching and concerning the premises aforesaid.

And now (that is to say) on [Friday, the 11th day of January,] in this same term, before our said Lady the Queen, at Westminster, cometh the said J. S. by —, his clerk in court, and having heard the said information read, he saith that he is not guilty thereof; and hereupon he putteth himself upon the country. And the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen, doth the like; therefore let a jury thereupon come before our said Lady the Queen on(a) —, wheresoever [\*294] she shall \*then be in England, by whom the truth of the matter may be better known, and who are not of the kindred of the said J. S., to try upon their oath whether the said J. S. be guilty of the premises aforesaid or not; because as well the said C. F. R., who for our said Lady the Queen in this behalf prosecuteth, as the said J. S., have thereupon put themselves upon the same jury, the same day is given as well to the said C. F. R., who for our said Lady the Queen in this behalf prosecuteth, as to the said J. S.

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### No. 33.

#### Record of Nisi Prius.

*Copy the issue verbatim as ante, Nos. 31 & 32, then go on thus:—*  
At which time, to wit, on(b) —, before our said Lady the Queen at Westminster, come as well the said C. F. R., who for our said Lady the Queen in this behalf prosecuteth, as the said J. S. by his clerk in court aforesaid, and the sheriff of the said county of — hath returned the names of twelve jurors, none of whom come to try in form aforesaid; therefore the sheriff of the said county of — is commanded that he do not forbear, by reason of any liberty in his bailiwick, but that he distrain the bodies of the jurors aforesaid, by all their lands and chattels in his bailiwick, so that neither they, nor any one for them, do put their hands to the same, until he shall have another command from our said Lady the Queen for that purpose; and that he answer to our said Lady the Queen for the issues thereof, so that he may have their bodies before our said Lady the Queen on(c) —, wheresoever she shall then be in England, or before the justices of our said Lady the Queen assigned to hold the assizes in and for the said county of —, if they shall come before that time (that is to say,) on(d) [Monday, the — day of —, at — in the said county,] according to the form of the statute in such case made and provided, to try upon their oath whether the said J. S. be guilty of the premises aforesaid or not, in default of the jurors aforesaid who came not to try in form afore-

(a) The return day of the venire; usually the last day of the term preceding the trial.

(b) The return day of the venire.

(c) The return day of the distringas; usually the first day of the term next after the trial.

(d) The commission day at the assizes.

said ; therefore let the sheriff of the said county of — \*have the bodies of the jurors aforesaid accordingly to try in form aforesaid : [\*295] the same day is given as well to the said C. F. R., who for our said Lady the Queen in this behalf prosecuteth, as to the said J. S.

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No. 34.

Venire.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of — greeting. We command you, that [you do not forbear by reason of any liberty in your bailiwick, but that(a)] you cause to come before us, on(b) —, wheresoever we shall then be in England, twelve good and lawful men of the body of your county qualified according to law, by whom the truth of the matter may be better known, and who are not of the kindred of J. S., late of —, gentleman, to try upon their oath whether the said J. S. be guilty of certain misdemeanors whereof he is impeached or not ; because as well Charles Francis Robinson, Esq., our coroner and attorney in our court before us, who for us in this behalf prosecuteth, as the said J. S., have thereupon severally put themselves upon the said jury ; and have you then there the names of the said jurors and this writ. Witness, Thomas Lord Denman, at Westminster, the(c) — day of —, in the — year of our reign.

By the court,  
ROBINSON.

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No. 35.

Distringas.

(Common or special jury.)

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, \*to the sheriff of — greeting. We command you, that [you do not forbear by reason of [\*296] any liberty in your bailiwick, but that(d)] you distrain the bodies of the several persons named in the panel annexed to this writ [or, if the jury be special, say, "that you distrain A. B., of &c., Esq., C. D., of &c., merchant," inserting the names and descriptions of the twenty-four special

(a) The non-omittas clause should not be inserted when the writ is directed to the sheriffs of London, or of any other city.

(b) Any day in term time before the trial ; usually the last day of the preceding term.

(c) The date of defendant's plea.—There must be fifteen days exclusive between the teste and return of the writ. (1 Guide, 53.)

(d) See note (a) to form of Venire, No. 34.

*jurors according to the Master's list,*] being the jurors summoned in our court before us, between us and J. S., late of &c., by all their lands and chattels in your bailiwick, so that neither they, nor any one for them, do put their hands to the same, until you shall have another command from us for that purpose; and that you answer to us for the issues thereof, so that you may have their bodies before us on(e) —, wheresoever we shall then be in England, or before our justices assigned to hold the assizes in and for our county of —, if they shall come before that time (that is to say,) on(f) — the — day of — next, at —, in your county [if the trial is to be had in London or Middlesex say, "or before our right trusty and beloved Thomas Lord Denman, our Chief Justice assigned to hold pleas in our court before us, if he shall come before that time (that is to say,) on(g) — the — day of — next, 'at the Guildhall of and within our city of London' or 'at Westminster, in our county of Middlesex in the great hall of pleas there,'"] according to the form of the statute in such case made and provided, to try upon their oath whether the said J. S. be guilty of certain misdemeanors whereof he is impeached or not; and to hear their judgment for their many defaults: and have you then and there this writ. Witness, Thomas Lord Denman, at Westminster, the(h) — day of —, in the — year of our reign.

By the court,  
ROBINSON.

By the controlment of — term, — roll:  
*Indorsed*, "This writ is allowed, inrolled, and delivered of record before our Lady the Queen at Westminster, the term and roll within written."

{\*297]

\*No. 36.

*Attorney-General's Warrant of Nisi Prius.*

*Surrey.* } LET a record of nisi prius be made up between our Sovereign  
          } Lady the Queen and J. S., late of &c., for certain *misdemeanors*  
whereof he is impeached.

By the controlment of — term, in the  
— year of Queen Victoria, the  
— roll.

G. B. B., clerk in court for the  
prosecutor [or defendant.]

F. POLLOCK.

(e) Some day in term time after the intended trial, usually the first day of the next term. There must be fifteen days between the teste and return of this writ. (1 Gude, 54.)

(f) The commission day at the assizes.

(g) The first day of the particular sittings.

(h) The return day of the venire.

## No. 37.

## Attorney-General's Warrant for a Tales.

*Surrey.* } SIR Frederick Pollock, Knt., Attorney-General of our present  
 } Sovereign Lady the Queen, [for our said Lady the Queen] prays  
*a. tales de circumstantibus* to be granted by the court here, according to the  
 form of the statute in such case made and provided, for the trial of the issue  
 [or issues] joined between our said Lady the Queen and J. S., late of  
 —, for certain misdemeanors whereof he is impeached, lest the jury to be  
 taken in this behalf do remain untaken for default of jurors.

By the controlment of — term, in the  
 — year of Queen Victoria, the —  
 roll.

G. B. B., clerk in court for the  
 prosecutor [or defendant.]

F. POLLOCK.

## No. 38.

## Subpoena ad testificandum.

VICTORIA, by the grace of God of the United Kingdom of Great Britain  
 and Ireland Queen, Defender of the Faith, to [names of witnesses not  
 exceeding four,] and to every of them, greeting. We command you, and  
 every of you, that, laying aside all excuses and pretences whatsoever, you  
 and every of you personally be and appear before our justices assigned  
 to hold the assizes in and for our county of —, on — the — day of  
 —, at —, in our said \*county, there to testify the truth on our [\*298]  
 behalf against J. S., upon an information for certain misdemeanors  
 whereof he is impeached; and so from day to day till the said information  
 be tried. And this you or any of you are not to omit under the penalty of  
 one hundred pounds, to be levied on the goods and chattels, lands and tene-  
 ments of such of you as shall fail herein. Witness, Thomas Lord Denman,  
 at Westminster, the — day of —, in the — year of our reign.

By the Court,

ROBINSON.

N. B.—Where the subpoena is for the defendant, it must be "to testify  
 the truth between us and J. S., upon an information for certain misde-  
 meanors whereof he is impeached, on behalf of the said J. S.; and so  
 from day to day until the said information be tried; and this" [*&c.*, as  
 above.]

## No. 39.

Subpœna duces tecum.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to A. B., greeting. We command you, that, laying aside all excuses and pretences whatsoever, you personally be and appear before our justices assigned to hold the assizes in and for our county of —, on — the — day of —, at —, in our said county, there to testify the truth on our behalf against J. S., upon an information for certain misdemeanors whereof he is impeached, and so from day to day until the said information be tried; and that you do bring with you, and produce at the time and place aforesaid, [*here describe shortly the deed or documents required to be produced,*] in order that the same may be given in evidence on our behalf against the said J. S., upon the trial of the said information, and this you are not to omit under the penalty of one hundred pounds, to be levied on your goods and chattels, lands and tenements, if you shall fail herein. Witness, Thomas Lord Denman, at Westminster, the — day of —, in the — year of our reign.

By the court,  
ROBINSON.

N. B.—If the subpœna be issued on behalf of the defendant, *see note to No. 38, supra*, it may contain four names.

[\*299]

\*No. 40.

Petition for a License to employ Queen's Counsel on behalf of the Defendant.

To the Queen's most excellent Majesty.

The humble petition of J. S. of —, Gent.

Sheweth,

THAT in last — term a criminal information was granted by your Majesty's Court of Queen's Bench [*or "was exhibited by Sir Frederick Pollock, Knt., your Majesty's Attorney-General," against your petitioner for [here state shortly the nature of the offence alleged to have been committed by the petitioner;]* to which information your petitioner has appeared and pleaded, [*or say, "to which information your petitioner is required to appear and plead as of this present — term;"*] and your petitioner being desirous of having the assistance of F. T., Esq., one of your majesty's counsel learned in the law, who may be very useful to your petitioner on the trial of the said information, and other proceedings relating thereto.

Your petitioner therefore humbly prays that your Majesty would be graciously pleased to grant your royal license and dispensation for the said F. T., Esq., to be of counsel for your petitioner on the trial of the said information and other proceedings relating thereto; and your petitioner as in obedience and duty bound shall ever pray, &c.



## No. 41.

License for Queen's Counsel to plead for a Defendant.

VICTORIA, R.

WHEREAS J. S., of, &c., gentleman, hath, by his petition, humbly represented unto us, that [*recite allegations in the petition*] the petitioner hath therefore humbly prayed us that [*recite prayer of the petition* ;] We, being graciously pleased to condescend to his request, do accordingly, by these presents, dispense with the said F. T., Esq., and grant him our royal license to be of counsel for the petitioner in the said prosecution, as often as there shall be occasion. Given at our court of St. James's, the — day of —, in the — year of our reign.

By her Majesty's command,

[Signature of Secretary of State.]

\*No. 42.

[\*300]

Postea in London or Middlesex—Special Jury with a Tales.

AFTERWARDS, on the day and at the place last within contained, before the within-named Thomas Lord Denman, Chief Justice of our Lady the Queen assigned to hold pleas before the Queen herself, the Hon. Thomas Denman being associated to the said Chief Justice according to the form of the statute in such case made and provided, comes as well the within-named Charles Francis Robinson, Esq., who for our said Lady the Queen in this behalf prosecuteth in his proper person, as the within-named J. S. by his clerk in court within mentioned ; and the jurors of the jury within mentioned being called, (a) some of them, to wit, A. B., of &c., merchant, [*here insert names and descriptions of such special jurymen as appeared*], come and are sworn upon the said jury, and because the rest of the jurors of the said jury do not appear, therefore others of the bystanders named and approved for that purpose by the sheriffs of the said city of London, [*or "by the sheriff of the said county of Middlesex," as the case may be*], at the request of Sir Frederick Pollock, Knt., attorney-general of our said Lady the Queen, by the command of the said Chief Justice, [*or "justices," if at the assizes*], are newly appointed, whose names are added to the panel according to the form of the statute in such case made and provided, which said jurors so newly appointed, (to wit,) O. P., of &c., grocer, [*names and descriptions of the talesmen,*] being called, likewise come and are also sworn upon the said jury, whereupon public proclamation is made here in court for our said Lady the Queen, as the custom is, that if there be any one who will inform the aforesaid Chief Justice, the Queen's serjeant-at-law, the Queen's attorney-general, or the jurors of the jury aforesaid, concerning the matters within contained, he should come forth and should be heard ; and hereupon T. J. P., Esq., one of the counsel of our said Lady

(a) If the jury were common, see the next precedent.

the Queen learned in the law, [or T. M., Esq., a counsel learned in the law,] offereth himself on behalf of our said Lady the Queen to do this; whereupon the court here proceedeth to the taking of the inquest aforesaid, as well by the jurors aforesaid first impannelled and sworn as by the other [\*301] jurors now here appearing, who, together with the \*jurors aforesaid first impannelled and sworn, being chosen, tried, and sworn to speak the truth touching and concerning the matters within contained, say upon their oath that the said J. S. is *guilty* of the premises charged upon him in and by the said information, in manner and form as in and by the said information is within alleged against him. [Or thus, "say upon their oath that the said J. S. is *not guilty* of the premises within specified and charged upon him in and by the said information, in manner and form as the said J. S. hath by pleading for himself within alleged." Or thus, "say upon their oath that the said J. S. is not guilty of the premises in the first, second, and third counts of the information within specified and charged upon him, in manner and form as the said J. S. hath by pleading for himself within alleged; and the jurors aforesaid, upon their oath aforesaid, further say, that the said J. S. is guilty of the premises charged upon him in and by the fourth, fifth, and sixth counts of the said information, in manner and form as in and by the said fourth, fifth and sixth counts of the said information is within alleged against him."]

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#### No. 43.

##### Postea at the Assizes—Common Jury.

AFTERWARDS, on the day and at the place last within contained, before the Right Hon. Thomas Lord Denman, Chief Justice assigned to hold pleas before the Queen herself, and the Hon. Sir C. D., Knt., one of the justices of our said Lady the Queen assigned to hold pleas before the Queen herself, [or "one of the justices of our said Lady the Queen of the Bench," or "one of the Barons of the Exchequer of our said Lady the Queen," *as the case may be,*] justices of our said Lady the Queen assigned to hold the assizes in and for the county of ——— within mentioned, according to the form of the statute in such case made and provided, come as well the within-named Charles Francis Robinson, Esq., who for our said Lady the Queen in this behalf prosecuteth in his proper person, as the within named J. S. by his clerk in court within mentioned; and the jurors of the jury within mentioned being called, (a) and drawn out of the panel according to the [\*302] form of the \*statute in such case made and provided, come and are sworn upon the said jury; whereupon public proclamation is made here in court for our said Lady the Queen, as the custom is, that if there be any one who will inform the aforesaid justices of assize, the Queen's serjeant-at-law, the Queen's attorney-general, or the jurors of the jury aforesaid, concerning the matters within contained, he should come forth

(a) If the jury were special, see the preceding precedent.

and should be heard; and hereupon J. W. Esq., a counsel learned in the law, [or "one of the counsel of our said Lady the Queen learned in the law,"] offereth himself on behalf of our said Lady the Queen to do this; whereupon the court here proceedeth to the taking of the inquest aforesaid by the jurors aforesaid now here appearing for the purpose aforesaid, who being chosen, tried, and sworn to speak the truth touching and concerning the matters within contained, say upon their oath that the said J. S. is *guilty* of the premises charged upon him in and by the said information, in manner and form as in and by the said information is within alleged against him. [Or thus, "say upon their oath, that the said J. S. is *not guilty* of the premises within specified and charged upon him in and by the said information, in manner and form as the said J. S. hath by pleading for himself within alleged." Or thus, "say upon their oath, that the said J. S. is not guilty of the premises in the first and third counts of the information within specified and charged upon him, in manner and form as the said J. S. hath by pleading for himself within alleged; and the jurors aforesaid, upon their oath aforesaid, further say that the said J. S. is guilty of the premises charged upon him in and by the second count of the said information, in manner and form as in and by the said second count of the said information is within alleged against him."]

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#### No. 44.

Judgment after Verdict for the Defendant or for the Crown.

*Copy the record of Nisi Prius, which includes the issue and award of jury process, &c., then go on thus:—*

At which time, to wit, on —, [the day the writ of *distringas* is made returnable in *banc*,] come as well the said Charles Francis Robinson, Esq., who for our said Lady \*the Queen in this behalf prosecuteth, in his proper person, as the said J. S. by his clerk in court aforesaid; and [\*303] the aforesaid Chief Justice [or "justices of assize,"] before whom the said issues were tried, hath sent here his record had before him, [or "have sent here their record had before them,"] in these words, (that is to say), [*copy the postea verbatim*;] whereupon all and singular the premises being seen and fully understood by the court of our said Lady the Queen now here, it is considered and adjudged by the said court here "that he the said J. S. do depart hence without day in this behalf," *if the verdict be not guilty*; otherwise the judgment is, "that the said J. S. be taken and so forth."

N. B.—For form of *final* judgment against the defendant see post, No. 53, p. 308.

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## No. 45.

Certificate of Conviction for Judge's Warrant to apprehend the defendant.

England.

I do hereby certify, that in — term last an information was exhibited in her Majesty's Court of Queen's Bench at Westminster, by her Majesty's then attorney-general, [or "by the coroner and attorney of the said court,"] against J. S., late of —, in the county of —, printer, for [wickedly and maliciously composing, printing, and publishing certain seditious and scandalous libels of and concerning the administration of the laws of this realm, on the — day of —, in the year —, at — aforesaid, against the peace, &c.]; and I further certify, that the said J. S. did afterwards appear and plead to the said information, and at the last assizes held in and for the county of — was by a [special] jury of the country found guilty of the offence therein charged upon him; and that the said J. S. is not under any recognizance to appear in the said Court of Queen's Bench to receive the judgment of the said court for his said offence. Dated the — day of —, 18—.

G. B. B.

Crown Office.

[\*304]

\*No. 46.

Judge's Warrant after a Conviction to apprehend a Defendant to receive Judgment.

England (to wit.)

WHEREAS it is certified to me by one of the clerks in the Crown Office that J. S., late of —, in the county of —, printer, stands charged by information filed against him in the Court of Queen's Bench, of — term last, with [wickedly and maliciously composing, printing, and publishing certain seditious and scandalous libels of and concerning the administration of the laws of this realm, on the — day of —, in the year —, at —, aforesaid, against the peace, &c.]; To which said information the said J. S. appeared and pleaded, and was thereupon tried at the last assizes held in and for the county of —, when he was found guilty of the offence therein charged upon him; and it is further certified that the said J. S. is not under any recognizance to appear in the said court to receive the judgment of the said court for his said offence:

(L. S.)

J. PATTESON.

THESE are therefore to will and require, and in her Majesty's name strictly to charge and command you, and every of you, on sight hereof, to apprehend and take the body of the said J. S., and if he shall be apprehended in term time to bring him into her Majesty's Court of Queen's Bench at Westminster, to receive the judgment of the said court for his said offence; or if he shall be apprehended in vacation, forthwith to convey him to the common gaol of the county, city or place where he shall be apprehended by virtue hereof, there to remain without bail or mainprize until he shall be from

thence discharged by due course of law; hereof fail not at your peril. Given under my hand and seal this — day of —, in the year of our Lord 18—.

To A. B., gent., my tipstaff, and  
to all chief and petty constables,  
headboroughs, and tithingmen,  
and all others whom these may  
concern.

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\*No. 47.

[\*305]

Capias pro fine.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to the sheriff of —, greeting. We command you, that you do not forbear, by reason of any liberty in your bailiwick, but that you take J. S., of, &c., gent., if he shall be found in your bailiwick, and him safely keep so that you may have his body before us on —, wheresoever we shall then be in England, to satisfy us concerning his redemption, by reason of certain misdemeanors whereof he is impeached, and thereupon by a jury of the country taken between us and the said J. S., [or “by his own default,” *if the judgment were by default*], he stands convicted as in our said court before us it appears upon record, and have you then there this writ. Witness, Thomas Lord Denman, at Westminster, the —, day of —, in the — year of our reign.

By the Court,  
ROBINSON.

Indorsed,  
D. and B., clerks in court for  
the prosecutor.

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No. 48.

Recognizance after Conviction to appear to receive Judgment.

England,

Be it remembered, That on the — day of —, in the — year of the reign of our Sovereign Lady Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, Joseph Styles, of —, printer, A. B., of &c., Esq., and C. D., of &c., gent., come before me, J. P., Esq., one of her Majesty's justices of the peace for the county of —, and acknowledge to owe to our said Lady the Queen, the several sums following, (that is to say,) the said J. S. the sum of £1000, and the said A. B. and C. D. the sum of £500 each, to be levied upon their several goods and chattels, lands and tenements, to her Majesty's use: *Upon condition*, that if the said J. S. shall personally appear in her Majesty's Court of Queen's Bench at Westminster on the fifth day of the next term to receive the judgment of the said court \*for certain misdemeanors whereof he is impeached, and by a jury of the country [or “by his [\*306]

own default"] convicted, and shall appear from day to day in the said court, and not depart until discharged by the said court, then this recognizance to be void, or else to remain in full force.

Taken and acknowledged the  
day and year first above said,  
before me, J. P.

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No. 49.

Notice to Defendant and his Bail, for Defendant to appear to receive judgment.

In the Queen's Bench.

*Berkshire.*—The Queen against J. S.

TAKE NOTICE, That her Majesty's Court of Queen's Bench will be moved on — next, or so soon after as counsel can be heard for the judgment of the said court against the defendant for certain misdemeanors whereof he is impeached and by a jury of the country [or "by his own default," *as the case may be*] convicted; [and that the said defendant will then be called upon his recognizance to receive such judgment, and in case he does not appear the said court will be moved that his default may be recorded, and the said recognizance estreated into the Exchequer.] Dated this — day of —, 18—.

Yours, &c.,

J. C.

Solicitor for the Prosecutor.

To J. S., the defendant, and  
also to A. B., of &c., and C.  
D., of &c., his bail.

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No. 50.

Notice by Defendant of his intonion to appear and receive Judgment.

In the Queen's Bench.

*Yorkshire.*—The Queen v. J. S.

I HEREBY give you notice, That the above-named defendant, J. S., will on —, the — day of — instant, \*personally be and appear [\*307] in open court, in order to receive the judgment of the said court for the misdemeanors whereof he stands convicted. Dated this — day of —, 18—.

Yours, &c.

A. B..

Solicitor for the said Defendant.

To Mr. J. C.,  
Solicitor for the Prosecution.

## No. 51.

Rule of Reference to the Master.

[Tuesday], the — day of — in the — year of the reign of Queen Victoria.

(In the Queen's Bench.)

Middlesex.—The Queen against J. S.

UPON reading the several affidavits of [*the affidavits filed in aggravation and mitigation*], and upon hearing counsel on both sides, it is ordered that all matters in difference between the prosecutor and the defendant be referred to the coroner and attorney of this court to be finally determined by him.

Mr. Solicitor-General, for the prosecutor.

Mr. —, for the defendant.

By the Court.

## No. 52.

Rule of Court made on Sentence being pronounced on the defendants.

[Tuesday], the — day of —, in the — year of the reign of Queen Victoria.

(In the Queen's Bench.)

Middlesex.—The Queen against J. S. and T. R.

THE defendants being present here in court, and being by a jury of the country convicted of certain misdemeanors in printing and publishing, and causing to be composed, printed, and published, a certain scandalous libel whereof they are impeached; upon reading the affidavits of [the defendants] \*and upon hearing Mr. Solicitor-General for the Queen, it is adjudged and ordered that each of the said defendants, for his [\*308] offence aforesaid, do pay a fine to our Sovereign Lady the Queen of five hundred pounds of lawful money of Great Britain, and be imprisoned for the term of two years now next ensuing; the defendant J. S. in the house of correction in and for the county of Middlesex, and the defendant T. R. in the common goal in and for the county of —, and that each of them, the said defendants, do give security for his good behaviour for the space of five years, to be computed from and after the end and expiration of the said two years, (that is to say) each of them in the sum of five hundred pounds, with two sufficient sureties in two hundred and fifty pounds each; and the defendant J. S. is now committed to the custody of the keeper of the said house of correction in and for the said county of Middlesex, and the defendant T. R. to the custody of the keeper of the said common gaol in and for the said county of —, to be each of them kept in safe custody in execution of this judgment, and until he shall have paid the said fine and given such security as aforesaid.

By the Court.

## No. 53.

Final Judgment as entered on the Roll after sentence.

*After the entry of interlocutory Judgment against the defendant, as ante No. 44, proceeds thus:—*

AND hereupon, afterwards (to wit,) on —, in this same term, before our said Lady the Queen at Westminster, the said J. S., being present here in court, [or “being brought here into court, in custody of the sheriff of —, by virtue of a writ of habeas corpus,” or “being brought here into court in custody of the keeper of the Queen’s prison by virtue of a rule of this court,” *as the case may be*:] It is considered and adjudged by the said court here, that he the said J. S., for his offences aforesaid, [do pay a fine to our Sovereign lady the Queen of five hundred pounds of lawful money of Great Britain, and be imprisoned for the term of two years, &c. &c., according to the terms of the rule. (See ante, No. 52.)]

[\*309]

## \*No. 54.

Recognizance “to be of good Behaviour,” or “to keep the Peace,” for a certain period, pursuant to Defendant’s Sentence.

England.

BE it remembered, That on the — day of —, in the — year of the reign of our Sovereign Lady Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, Joseph Styles of — printer, A. B., of &c., Esq., and C. D. of &c., Gent., come before me J. P., Esquire, one of her Majesty’s justices of the peace for the county of —, and acknowledge to owe to our said Lady the Queen the several sums following (that is to say,) the said J. S. the sum of £500, and the said A. B. and C. D. the sum of £250 each, to be levied upon their several goods and chattels, lands and tenements, to her Majesty’s use: *Upon condition*, that if the said J. S. shall personally appear in her Majesty’s Court of Queen’s Bench at Westminster, on the first day of — term, which will be in the year of our Lord —(a) and in the meantime [“be of good behaviour,” or “keep the peace towards our Sovereign Lady the Queen, and all her liege subjects, and especially towards E. F.” *according to the sentence*] and shall appear from day to day in the said court, and not depart until discharged by the said court, then this recognizance to be void, or else to remain in full force.

Taken and acknowledged the  
day and year first above  
written before me, J. P.

(a) The time when the recognizance is to expire according to the sentence.



# APPENDIX B.

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## QUO WARRANTO INFORMATION.

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### FORMS.

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\*No. 1.

[\*310]

**Affidavit for a Quo Warranto Information against a Burgess.**

**In the Queen's Bench.**

T. R., of &c., doctor of physic, C. S., of &c., gent., and H. C., of, &c., gent., severally make oath and say; and first this deponent T. R. for himself saith, that he has been for six years last past, and still is, a citizen and burgess of the city and borough of Lichfield, and also a councillor and one of the council of the said borough, and that he, this deponent, has also been for many years and still is an inhabitant householder in the parish of St. M., in the said city and borough, and subject and liable to the borough rates of the said borough, and to the local jurisdiction of the council thereof; and this deponent T. R. further saith that the said city and borough of L. is one of the boroughs named in schedule (A.) annexed to the act of Parliament made and passed in the sixth year of the reign of his late Majesty King William the Fourth, to provide for the regulation of Municipal Corporations in England and Wales; and this deponent T. R. further saith, that the motion for an information in the nature of a quo warranto against the Rev. G. H., of —, in the county of —, clerk, to show by what authority he claims to exercise the office or franchise of a burgess of the city and borough, and to \*be a burgess of the same borough, and a member of the body corporate of the mayor, aldermen, and bur- [\*311] gesses of the said city and borough of L., is made at the instance of this deponent, T. R., as relator; and these deponents, C. S. and H. C., for themselves say, that they are well acquainted with the above-named G. H., and that he the said G. H. resides in the parish of —, in the county of —, at a distance of more than seven miles from the said city and borough of L.; and these deponents, C. S. and H. C., further say, that the said G. H. did not on the 31st day of August, in the year 1841, and during the

whole of the previous part of that year and during the whole of each of the two preceding years, occupy any house, warehouse, counting-house, or shop within the said city and borough of L., and that the said G. H. was not during the period aforesaid an inhabitant householder within the said city and borough, or within seven miles thereof; and these deponents, C. S. and H. C., further say, that they, these deponents, have carefully inspected all the assessments and rates made for the relief of the poor of the several parishes of St. Mary, St. Michael, and St. Chad, and of the parish or place called Lichfield Close, and of that part of the hamlet of Pipehill which is within the limits and boundaries of the city and borough of L. aforesaid, being all the parishes, places, and hamlets having their own overseers and maintaining their own poor respectively within the said city and borough during the said period, commencing on the 1st day of January in the year 1839, and ending on the 31st day of August in the year 1841, and that the name of the said G. H. is not inserted in any of the said assessments or rates, nor has the said G. H. been rated to the relief of the poor in respect of any premises occupied by him within the said city and borough during the period last aforesaid; and these deponents, C. S. and H. C., further say, that a certain place called the Friery is the only extra-parochial place within the said city and borough, and that during the said period no house, warehouse, counting-house, or shop situate within the said place called the Friery was occupied by the said G. H.; and these deponents, C. S. and H. C., further say, that during the said period no house, warehouse, counting-house, or shop within the said city and borough hath come to the said G. H. by descent, marriage, marriage-settlement, devise or promotion to any benefice or office, to the best of the knowledge and belief of these deponents; and these deponents, C. S. and H. C., further say, that the name of the said G. H. is inserted in the burgess-roll of the said city [\*312] and borough of L. for the \*present year as one of the burgesses of the said city and borough, and also in the ward-list for the North Ward of the said city and borough as a burgess of the said North Ward, and that the name of the said G. H. is inserted in the said burgess-roll and North-Ward list respectively, in the said parish or place called Lichfield Close, as follows [*copy entry.*](a) And these deponents, C. S. and H. C., further say, that they have inspected, at the office of C. S., the town-clerk of the said city and borough of L., a certain voting-paper in the possession of the said C. S. as such town-clerk as aforesaid, purporting to be the voting-paper of the said G. H., as a burgess of the North Ward of the said city and borough, at an election of councillors for the North Ward of the said city and borough held on the 1st day of November last, and that such voting-paper was and is in the words and figures following, that is to say [*copy it exactly*]; and this deponent, C. S., for himself saith, that he was present at the said election on the 1st day of November last, and did see the said G. H. deliver the same voting-paper to the presiding alderman and assessors at the said election, and that the said G. H. then acted and voted

(a) If defendant's name was duly objected to before the revising court, and that court improperly allowed his name to remain on the burgesses' list, state such facts; and if any delay has occurred before the making of the application, explain the cause of such delay. (*Reg. v. Hodson*, T. T., 1842; 20 Law J., Q. B. 219; *Reg. v. Anderson*, 2 Gale & D. 113.)

as a burgess for the North Ward of the said city and borough of L., and as this deponent verily believes the said G. H. claims to be a burgess of the said city and borough, and to use, exercise, and enjoy the office or franchise of being such burgess as aforesaid.

Sworn by the deponents,  
T. R., &c.

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No. 2.

**Affidavit for a Quo Warranto Information against a Councillor of a Borough.**

In the Queen's Bench.

A. B. of, &c., gent., C. D., of, &c., grocer, and E. F., of, &c., innkeeper, severally make oath and say; and first this deponent, A. B., for himself saith, that he this deponent now \*is an inrolled burgess of the borough of —, in the county of —, and that for the last — [\*313] years and upwards this deponent hath been and still is an inhabitant householder within [seven miles of] the said borough, and the occupier of a certain house [warehouse, counting-house, or shop, *as the case may be,*] situate within the said borough, and subject and liable to the borough rates of the same borough, and to the local jurisdiction of the council thereof; and this deponent, A. B., further saith, that the said borough of — is one of the boroughs named in schedule (A.), annexed to the act of Parliament made and passed in the sixth year of the reign of his late Majesty King William the Fourth, to provide for the regulation of Municipal Corporations in England and Wales; and that the said borough is divided into two wards, one called the North Ward, and the other called the South Ward; and this deponent, A. B., further saith, that on the 1st day of November, in the year —, an election of three councillors for the North Ward of the said borough to supply the places of three councillors of the said ward, then going out of office according to the provisions of the said act, was held before —, Esquire, the presiding alderman for the time being of the said North Ward, (the said — then being the alderman appointed in that behalf by the councillors chosen in such ward,) and before — and —, then being the two assessors for the said North Ward; and all the said deponents severally say, that *[here state all the material facts and circumstances, shewing either that the election itself was irregular and bad, or that the defendant was not duly elected according to the provisions of the act, or that he was disqualified. Be particular to shew some violation of, or non-compliance with, the provisions of the 5 & 6 Will. 4, c. 76, as amended by the 7 Will. 4 & 1 Vict. c. 78, so as to establish clearly the grounds of objection intended to be relied on. If the material facts are likely to be contradicted, let several deponents join in the affidavit as to such facts. If written documents are mentioned, the originals should not be annexed to the affidavit, for they cannot be obtained back from the Crown Office when filed there with the affidavit: copies should therefore be set out verbatim, if material, and not too long. Attend to the general points and suggestions as to the affidavits in support of the application (ante, 178 to 186)]*; and this depo-

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nent, A. B., for himself, further saith, that since the said election, and on or about the — day of November last, the said J. S. made and subscribed before O. P. and Q. R., two of the councillors [or aldermen] of the said borough, the declarations as a councillor of the said borough required by the fifteenth section of \*the said act of Parliament, as this deponent [\*314] has been informed and verily believes; and that the said J. S. hath since the said election taken upon himself the office of a councillor of the said borough, and has assumed to be a councillor of the said borough, and has repeatedly acted as a councillor of the said borough [and has attended and voted as such councillor at meetings of the council of the same borough;] and this deponent A. B. for himself, further saith, that the motion for an information in the nature of a quo warranto against the said J. S., to shew by what authority he claims to exercise the said office of a councillor of the said borough, is made at the instance of this deponent, A. B., as relator.

Sworn by the deponents,

A. B., &c.

N. B.—For further precedents of affidavits for quo warranto informations, see 2 Gude's Prac. p. 84 to 102.

### No. 3.

#### Rule Nisi for a Quo Warranto Information against a Burgess.

Friday, the 28th day of January, in the fifth year of the reign of Queen Victoria.

(In the Queen's Bench.)

*Lichfield.* } Upon reading the affidavit of T. R. and others, it is ordered  
 { that the first day of the next term be given to the Rev. G. H., clerk, to shew cause why an information in the nature of a quo warranto should not be exhibited against him, to shew by what authority he claims to exercise the office or franchise of a burgess of the city and borough of Lichfield, and to be a burgess of the said borough, and a member of the body corporate of the mayor, aldermen, and burgesses of the said city and borough, upon the grounds [that he is not qualified to be a burgess of the said city and borough according to the act of the 5 & 6 Will. 4, c. 76, for the regulation of municipal corporations in England and Wales: that on the last day of August, 1841, he had not occupied any house, warehouse, counting-house, or shop, within the said borough during that year, and the whole of each of the two preceding years: that he was not, during the period [\*315] aforesaid, an inhabitant \*householder within the said borough, or within seven miles of the said borough: that he was not duly enrolled in that year as a burgess of the said borough, not having been rated in respect of any premises occupied by him within the said borough, to all rates made for the relief of the poor of the parish, if any, wherein such premises are situated, during the time of such occupation as aforesaid, nor having paid, on or before the said last day of August, all such poor-rates payable by him in respect of the said premises, except such as became

payable within six calendar months next before the said last day of August.]

Upon notice of this rule to be given to him in the mean time.

On the motion of Mr. —.

By the Court.

#### No. 4.

##### Affidavit of Service of Rule Nisi.

(In the Queen's Bench.)

S. G., of, &c., [gentleman,] maketh oath and saith; that he, this deponent, did, on the — day of — instant, personally serve the Rev. G. H., clerk, the person named in the rule hereto annexed, with a true copy of the said rule, and, at the same time, shewed him the said original rule, [or, if the service was not personal, omit the word "personally," and after the words "with a true copy of the said rule," say "by delivering such copy to and leaving the same with a female servant," [or the wife or the son, &c., as the case may be] of the said G. H., at his dwelling-house, situate —, and, at the same time, this deponent shewed to the said [servant] the said original rule.

Sworn, at, &c.

S. G.

#### No. 5.

##### Enlarged Rule for a Quo Warranto Information against a Burgess.

Monday, the 9th day of May, in the fifth year of the reign of Queen Victoria.

(In the Queen's Bench.)

*Lichfield.* } Upon hearing counsel on both sides, it is ordered that  
 } the third day of the next term be \*further given to the [\*316]  
 Rev. G. H., clerk, to show cause why an information in the nature of a quo warranto should not be exhibited against him, to shew by what authority he claims to exercise the office or franchise of a burgess of the city and borough of Lichfield, and to be a burgess of the said borough, and a member of the body corporate of the mayor, aldermen, and burgesses of the said city and borough, upon the grounds that [exactly as in the rule nisi].

The said G. H. hereby undertaking, in case such information shall be exhibited, to appear thereto immediately, [and to plead thereto, so that the prosecutor may proceed to trial thereon at the next assizes to be held in and for the county of Stafford].

And it is further ordered that all affidavits to shew cause be filed a week before [the day of shewing cause].

Mr. —, for the prosecutor.

The Solicitor-General, for the defendant.

By the Court.

## No. 6.

Rule discharging an enlarged Rule for a Quo Warranto Information against a Burgess.

Thursday, the ninth day of June, in the fifth year of the reign of Queen Victoria.

(In the Queen's Bench.)

*Lichfield.* } UPON reading the affidavit of the Rev. G. H., clerk, and upon  
                   } hearing counsel on both sides, and upon mature deliberation  
 had here in court, it is ordered that the rule made last term, that the third  
 day of this term should be peremptorily further given to the said G. H. to  
 shew cause why an information in the nature of a quo warranto should not  
 be exhibited against him, to shew by what authority he claims to exercise  
 the office of a burgess of the city and borough of Lichfield, and to be a  
 burgess of the said borough, and a member of the body corporate of the  
 mayor, aldermen, and burgesses of the said city and borough, upon the sev-  
 eral grounds and objections in the said rule specified, be now discharged  
 [with costs to be paid by the prosecutor to the defendant or his attorney,  
 such costs, if necessary, to be taxed by the coroner and attorney of this  
 court].

Mr. —, for the prosecutor.

Mr. Solicitor-General, for the defendant.

By the Court.

[\*317]

## \*No. 7.

Rule Nisi for a Quo Warranto Information against a Councillor.

Tuesday, the 11th day of January, in the fifth year of the reign of Queen Victoria.

(In the Queen's Bench.)

*Lichfield.* } UPON reading the affidavit of A. B., and others, it is ordered  
                   } that Saturday, the 22nd day of January in this term, be given  
 to T. R. to shew cause why an information in the nature of a quo warranto  
 should not be exhibited against him, to shew by what authority he claims  
 to be a councillor of the borough and city of Lichfield, on the grounds [that  
 he was not duly elected: that the election was irregular, inasmuch as the  
 votes were given for four candidates, and it does not appear which of them  
 was elected to supply the extraordinary vacancy occasioned by the removal  
 of W. T.: that the votes to supply the extraordinary vacancy should have  
 been given separately and not jointly with the votes for the other candi-  
 dates].

Upon notice of this rule to be given to him in the mean time.

On the motion of the Solicitor-General,

By the Court.

## No. 8.

Enlarged Rule for a Quo Warranto Information against a Councillor.

Saturday, the 29th day of January, in the fifth year of the reign of Queen Victoria.

(In the Queen's Bench.)

*Lichfield.* } UPON hearing the affidavit of T. R., and upon hearing counsel  
 } on both sides, it is ordered that the second day of the next term  
 be further given to the said T. R., to show cause why an information in the  
 nature of a quo warranto should not be exhibited against him, to shew by  
 what authority he claims to be a councillor of the borough and city of Lich-  
 field, on the grounds [that he was not duly elected: that the election was  
 irregular, inasmuch as the votes were given for four candidates, and it does  
 not appear which of them was elected to supply the \*extraordinary [\*318]  
 vacancy occasioned by the removal of W. T.: that the votes to  
 supply the extraordinary vacancy should have been given separately and  
 not jointly with the votes for the other candidates].

Upon the undertaking of the said T. R., in case such information shall  
 be exhibited, to put the prosecutor in the same situation as if the same had  
 been made absolute this day.

And it is further ordered, that all affidavits to shew cause be filed a week  
 before [the next term].

The Solicitor-General, for the prosecutor.

Mr. —, for the defendant.

By the Court.

## No. 9.

Rule absolute for a Quo Warranto Information against a Councillor.

Friday, the 6th day of May, in the fifth year of the reign of Queen Victoria.

[In the Queen's Bench.]

*Lichfield.* } UPON hearing the several affidavits of W. V., C. S., gent., T.  
 } R. and another, and T. A., and upon hearing counsel on both  
 sides, it is ordered that an information in the nature of a quo warranto be  
 exhibited against the said T. R., to shew by what authority he claims to be  
 a councillor of the borough and city of Lichfield, upon the grounds [that  
 he was not duly elected: that the election was irregular, inasmuch as the  
 votes were given for four candidates, and it does not appear which of them  
 was elected to supply the extraordinary vacancy occasioned by the removal  
 of W. T.: that the votes to supply the extraordinary vacancy should have  
 been given separately, and not jointly with the votes for the other candi-  
 dates].

Mr. Solicitor-General, for the prosecutor.

Mr. —, for the defendant.

By the Court.

## No. 10.

Recognizance taken before the Master of the Crown Office.

*London.* } Be it remembered, That on the — day of —, in the —  
 } year of the reign of our Sovereign Lady Victoria, by the grace of  
 God of the United \*Kingdom of Great Britain and Ireland Queen,  
 [\*319] Defender of the Faith, before Charles Francis Robinson, Esquire,  
 coroner and attorney of our said Lady the Queen in the court of our said Lady  
 the Queen, before the Queen herself, cometh E. F., of &c., surgeon, and  
 acknowledgeth himself to owe to J. S. the sum of twenty pounds of lawful  
 money of Great Britain; upon condition to prosecute with effect a certain infor-  
 mation in the nature of a quo warranto, exhibited by Charles Francis Robin-  
 son, Esq., coroner and attorney of our said Lady the Queen, in the court of  
 our said Lady the Queen before the Queen herself, against the said J. S., to  
 shew by what authority he the said J. S. claims to be mayor [or alderman,  
 councillor, auditor, assessor, or burgess, *as the case may be*], of the borough  
 of —, and to perform such orders as the said court shall direct in that  
 behalf.

Taken and acknowledged the day  
 and year first above said, before  
 me, C. F. ROBINSON.

## No. 11.

Recognizance taken before a Magistrate.

*Berkshire.* } Be it remembered, That on the — day of —, in the —  
 } year of the reign of our Sovereign Lady Victoria, by the grace  
 of God of the United Kingdom of Great Britain and Ireland Queen, Defen-  
 der of the Faith, before J. P., Esq., one of the keepers of the peace and jus-  
 tices of our said Lady the Queen, in and for the county of *Berks*, cometh  
 E. F., of &c., surgeon, and acknowledgeth himself to owe to J. S. the sum  
 of twenty pounds of lawful money of Great Britain; upon condition to  
 prosecute with effect a certain information in the nature of a quo warranto,  
 exhibited by Charles Francis Robinson, Esq., coroner and attorney of our  
 said Lady the Queen, in the court of our said Lady the Queen before the  
 Queen herself, against the said J. S., to show by what authority he the said  
 J. S. claims to be mayor [or an alderman, councillor, auditor, assessor, or  
 burgess, *as the case may be*], of the borough of —, and to perform such  
 orders as the said court shall direct in that behalf.

Taken and acknowledged the  
 day and year first above  
 said, before me, J. P.



\*No. 12.

[\*320]

Quo Warranto Information by the Attorney-General, ex officio, for holding a Fair at Edmonton, with Pleas and Replications, &c.

Of Michaelmas Term, in the third year of King George the Fourth.

*Middlesex.* } Bz it remembered, That Sir Robert Gifford, Knt., Attorney-General of our Sovereign Lord the present King, who for our said Lord the King prosecutes in this behalf, in his own proper person comes here into the court of our said Lord the King before the King himself at Westminster, on Thursday next after fifteen days of St. Martin, in this same term, and for our said Lord the King gives the court here to understand and be informed, that William Bingley, late of Edmonton, in the county of Middlesex, cornchandler, heretofore, (to wit,) on the 14th, 15th and 16th days of September, in the third year of the reign of our Sovereign Lord George the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, at Edmonton aforesaid, in the county of Middlesex aforesaid, (to wit) in and upon a certain close of the said William Bingley, situate, lying and being at Edmonton aforesaid, in the county aforesaid, without any legal warrant, royal grant, or right whatsoever, used and exercised the liberties and franchises following, (that is to say) the liberties and franchises of having and holding at Edmonton aforesaid, in the county aforesaid, (to wit), in and upon the said close, situate, lying and being at Edmonton aforesaid, in the county aforesaid, a fair for and during three days, (to wit) for and during the 14th, 15th and 16th days of September, in the third year of the reign aforesaid, for the buying and selling of all merchandizes, goods and chattels there, and the issues and profits from the said fair arising and growing, of converting and disposing to his own use (to wit) at Edmonton aforesaid, in the county aforesaid, which said liberties and franchises he the said William Bingley, on the said 14th, 15th and 16th days of September, in the third year of the reign aforesaid, upon our said Lord the King hath usurped, (to-wit) at Edmonton aforesaid, in the county aforesaid; in contempt of our said Lord the King, to the great damage and prejudice of his royal prerogative, and also against his crown and dignity.

*2nd Count.*—And the said Attorney-General of our said Lord the King, who prosecutes as aforesaid for our said \*Lord the King, further gives the court here to understand and be informed, that the said [\*321] William Bingley, heretofore (to wit) on the 14th day of September, in the third year of the reign of our said Lord the King, at Edmonton aforesaid, in the county aforesaid, (to wit) in and upon the said close situate, lying and being at Edmonton aforesaid, in the county aforesaid, without any legal warrant, royal grant or right whatsoever, used and exercised other the liberties and franchises following, (that is to say) the liberties and franchises of having and holding at Edmonton aforesaid, in the county aforesaid, (to wit) in and upon the said last-mentioned close, situate, lying and being at Edmonton aforesaid, in the county aforesaid, another fair, for and during one day, (to wit) for and during the 14th day of September, in the third year of the

reign aforesaid, for the buying and selling of all merchandizes, goods and chattels there, and the issues and profits from the said last-mentioned fair arising and growing, of converting and disposing of to his own use (to wit) at Edmonton aforesaid, in the county aforesaid, which said last-mentioned liberties and franchises he the said William Bingley, on the said 14th day of September, in the third year of the reign aforesaid, upon our said Lord the King, hath usurped, (to wit) at Edmonton aforesaid, in the county aforesaid; in contempt of our said Lord the King, to the great damage and prejudice of his royal prerogative, and also against his crown and dignity.

*3rd Count.*—And the said Attorney-General of our said Lord the King, who prosecutes as aforesaid for our said Lord the King, further gives the court here to understand and be informed, that the said William Bingley, for the space of one year now last past and more, at Edmonton aforesaid, in the county aforesaid, without any legal warrant, royal grant or right whatsoever, hath used and exercised, and still doth use and exercise, within the vill of Edmonton, in the county aforesaid, other the liberties and franchises following, (that is to say) to have and to hold in every year one other fair in the vill of Edmonton aforesaid, in the county aforesaid, to last three days, (to wit) on the 14th, 15th and 16th days of September, with all and singular liberties, profits and advantages belonging to the said last-mentioned fair, and also to hold in every year one other fair in the vill of Edmonton aforesaid, in the county aforesaid, to last three days, (to wit) on the 14th, 15th and 16th days of September, unless any of those days fall on Sunday, and when any of those days falls on Sunday then on such two of those days on which Sunday does not fall, and on the 17th day of September, with all [\*322] and singular liberties, profits and \*advantages belonging to the said last-mentioned fair; and also to have and to hold in every year one other fair in the vill of Edmonton aforesaid, in the county aforesaid, to last one day, (to wit) on the 14th day of September, with all and singular liberties, profits and advantages belonging to the last-mentioned fair; and also to have and to hold in every year one other fair in the vill of Edmonton aforesaid, in the county aforesaid, to last one day, (to wit) on the 14th day of September, unless the 14th day of September fall on Sunday, and when the 14th day of September falls on Sunday then on the day following, that is to say on the 15th day of September, with all and singular liberties, profits, and advantages belonging to the said last-mentioned fair; all and singular which said liberties and franchises in this count above mentioned he the said William Bingley, during all the time in this count in that behalf mentioned, upon our said Lord the King, hath usurped and still doth usurp, (to wit) at Edmonton aforesaid, in the county aforesaid; in contempt of our said Lord the King, to the great damage and prejudice of his royal prerogative, and also against his crown and dignity; whereupon the said Attorney-General of our said Lord the King, who prosecutes as aforesaid for our said Lord the King, prayeth the consideration of the court here in the premises, and that due process of law may be awarded against him the said William Bingley in this behalf, to make him answer to our said Lord the King, and show by what warrant he claimeth to have, use, exercise, and enjoy the said several liberties and franchises above mentioned.

*Pleas.*—And now (that is to say) on Wednesday next, after fifteen days from the feast-day of Easter, in this same term, before our Lord the King

at Westminster, cometh the said W. B. by R. B. his clerk in court, and having heard the information read, complains, that under colour of the premises in the said information contained, he is greatly vexed and disquieted, and this by no means justly, because protesting that the said information and the matters therein contained are by no means sufficient in law, and that he need not, neither is he by law obliged, to answer thereto; yet for plea as to the first count in the said information, the said W. B. saith, that the vill of E., before and at the said time when, &c., in the said first count mentioned, was, and still is, an ancient vill, and that within the said vill there is and from time whereof the memory of man is not to the contrary, hath been a certain ancient and laudable custom there used and approved of, (that is to say) that the inhabitants and residents of and within the said vill for the time being, should have and hold in every year in some convenient place for that purpose within the said vill, a certain fair [\*323] to last three days (to wit) on the 14th, 15th, and 16th days of September, unless any of those days should fall on Sunday, and when any of those days should fall on Sunday, then on such two of those days on which Sunday did not fall, and on the 17th day of September, for the buying and selling of all merchandizes, goods, and chattels there; and the said W. B. further saith, that at and upon the said days and times in the said first count mentioned, (to wit) on the 14th, 16th, and 17th days of September in the third year aforesaid, the then inhabitants and residents of and within the said vill, did have and hold the said fair in and upon the said close in the said first count mentioned, the said close then being within the said vill, and a convenient place for that purpose; and the said W. B. further saith, that at and upon the last-mentioned days and times, he the said W. B. was, and from thence hitherto hath been, and still is, an inhabitant and resident, of and within the said vill, and as such inhabitant and resident, at and upon the last-mentioned days and times, did suffer and permit the then inhabitants and residents of and within the said vill, to have and to hold the said fair in and upon the said close in the said first count mentioned, and assist in the having and holding as aforesaid the said fair, as it was lawful for him to do; without this that he the said W. B. the said liberty and franchise in the said first count mentioned hath usurped, or did usurp upon our present Sovereign Lord the King, in manner and form as in and by the said information is above alleged against him; all and singular which said matters and things the said W. B. is ready to verify and prove as the court here shall award: whereupon he prayeth judgment, and that the said liberty by him claimed, for and in behalf of the inhabitants and residents of and within the said vill for the time being in form aforesaid, may be allowed and adjudged to them, and that he the said W. B. may be dismissed and discharged by the court here of and from the premises above in and by the said first count charged upon him. And as to so much of the third count of the said information as relates to the liberty and franchise therein secondly above specified (that is to say), the liberty and franchise to have and to hold in every year one fair in the vill of E. aforesaid, in the county aforesaid, to last three days (to wit) on the 14th, 15th, and 16th days of September, unless any of those days fall on Sunday, and when any of those days fall on Sunday, then on such two of those days on which Sunday does not

[\*324] \*fall, and on the 17th day of September, the said W. B. saith, that the vill of E., before and at the said time when, &c., in the said third count mentioned, was and still is an ancient vill, and that within the said vill there is and from time whereof the memory of man is not to the contrary hath been a certain and laudable custom there used and approved of, (that is to say) that the inhabitants and resiants of and within the said vill for the time being should have and hold in every year in some convenient place for that purpose within the said vill a certain fair to last three days, (to wit) on the 14th, 15th, and 16th days of September, unless any of those days should fall on Sunday, and when any of those days should fall on Sunday, then on such two of those days on which Sunday did not fall, and on the 17th day of September, for the buying and selling of all merchandizes, goods, and chattels there; and the said W. B. further saith, that the inhabitants and resiants at and upon the 14th, 16th, and 17th days of September, in the third year aforesaid, the then inhabitants and resiants of and within the said vill did have and hold the said fair in and upon the said close in the said first count mentioned, the said close then being within the said vill, and a convenient place for that purpose; and the said W. B. further saith, that at and upon the last mentioned days and times he the said W. B. was and from thence hitherto hath been and still is an inhabitant and resiant of and within the said vill, and as such inhabitant and resiant at and upon the last-mentioned days and times did suffer and permit the then inhabitants and resiants of and within the said vill to have and to hold the said fair in and upon the said close in the said first count mentioned, and assist in the having and holding as aforesaid the said fair, as it was lawful for him to do; without this, that he the said W. B. the said liberty and franchise in the said third count secondly above mentioned hath usurped or did usurp upon our present sovereign Lord the King in manner and form as in and by the said information is above alleged against him; all and singular which said matters and things the said W. B. is ready to verify and prove as the court here shall award; whereupon he prayeth judgment, and that the said liberty by him claimed for and in behalf of the inhabitants and resiants of and within the said vill for the time being, in form aforesaid, may be allowed and adjudged to them, and that he the said W. B. may be dismissed and discharged by the court here of and from the premises above charged upon him, so far as the same relates to the alleged usurpation by him of the said liberty and franchise in the said \*third count secondly above specified. And as to the residue of the liberties and franchises in the said information particularly specified, the said W. B. saith, that he never used or exercised the last-mentioned liberties and franchises, nor any of them, nor in the same or any of them ever usurped upon the said Lord the King in manner and form as by the said information is supposed, but the same and every of them disclaims and disavows, whereupon he prays judgment, and that he may be dismissed from the court.

*Replication.*]—And the said Sir R. G., knt., the said Attorney-general of our said Lord the King, who prosecutes as aforesaid, being now present here in court, and having heard the said plea of the said W. B., by him in manner and form aforesaid above pleaded in bar to the said first count of the said information, for our said Lord the King says, as to the said plea of

the said W. B., by him above pleaded in bar as to the said first count of the said information, that by reason of any thing by the said W. B., in the said plea to the said first count of the said information, in that behalf alleged, our said Lord the King ought not to be barred from having and maintaining his aforesaid information against him, the said W. B., as to the said first count of the said information, because protesting that the said plea, as to the said first count of the said information, and the matters therein contained, are not sufficient in law to bar our said Lord the King from having and maintaining his aforesaid information as to the said first count thereof against the said W. B.; nevertheless, for replication in this behalf, as to the said plea of the said W. B., by him above pleaded in bar to the said first count of the said information, the said Attorney-general of our said Lord the King, who prosecutes as aforesaid, for our said Lord the King says, that the said vill of E., in the said plea to the said first count of the said information mentioned, was not and is not an ancient vill in manner and form as the said W. B. hath in the said plea to the said first count of the said information in that behalf above alleged; and this the said Attorney-general of our said Lord the King, who prosecutes as aforesaid, for our said Lord the King prays may be inquired of by the country. And the said W. B. doth the like. And the said Attorney-general of our said Lord the King, who prosecutes as aforesaid, for our said Lord the King further says, that within the said vill of E., in the said plea to the said first count of the said information mentioned, there is not, and from the time whereof the memory of man is not to the contrary there has not been, a certain ancient and laudable custom there used and approved of, (that is to say) that the inhabitants and residents of and within the said vill for the time being <sup>should have</sup> and hold in every year, in some convenient place for that purpose, [326] within the said vill, a certain fair to last three days, (to wit) on the 14th, 15th, and 16th days of September, unless any of those days should fall on Sunday, and when any of those days should fall on Sunday, then on such two of those days on which Sunday did not fall, and on the 17th day of September, for the buying and selling of all merchandises, goods and chattels there, in manner and form as the said W. B. hath in his said plea to the said first count of the said information in that behalf above alleged; and this also the said Attorney-general of our said Lord the King, who prosecutes as aforesaid, for our said Lord the King prays may be inquired of by the country. And the said W. B. doth the like. And the said Attorney-general of our said Lord the King, who prosecutes as aforesaid, being now present here in court, and having heard the said plea of the said W. B. by him above pleaded in bar as to so much of the said third count of the said information as relates to the liberty and franchise therein secondly above specified, (that is to say) the liberty and franchise which is in the same plea particularly set forth, for our said Lord the King says, as to the said plea of the said W. B. by him above pleaded in bar as to so much of the said third count of the said information as relates to the said last-mentioned liberty and franchise, that by reason of any thing by the said W. B. in the said plea to so much of the said third count of the said information as relates to the said last-mentioned liberty and franchise in that behalf alleged, our said Lord the King ought not to be barred from having and maintaining his aforesaid information against him the said W. B., as to so much of the said

third count of the said information as relates to the said last-mentioned liberty and franchise, because, protesting that the said plea as to so much of the said third count of the said information as relates to the said last-mentioned liberty and franchise and the matters therein contained, are not sufficient in law to bar our said Lord the King from having and maintaining his aforesaid information as to so much of the said third count thereof as relates to the said last-mentioned liberty and franchise against the said W. B. ; nevertheless for replication in this behalf as to the said plea of the said W. B. by him above pleaded in bar to so much of the said third count of the said information as relates to the said last-mentioned liberty and franchise, the said Attorney-general of our said Lord the King, who prosecutes as aforesaid, for our said Lord the King says, that the said vill of E., in the said plea to so much of the said third count of the said information as [\*327] relates to the \*said last-mentioned liberty and franchise mentioned, was not and is not an ancient vill in manner and form as the said W. B. has in his said plea to so much of the said third count of the said information as relates to the said last-mentioned liberty and franchise in that behalf above alleged ; and this also the said Attorney-general of our said Lord the King, who prosecutes as aforesaid, for our said Lord the King prays may be inquired of by the country. And the said W. B. doth the like. And the said Attorney-general of our said Lord the King, who prosecutes as aforesaid, for our said Lord the King further says, that within the said vill of E., in the said plea to so much of the said third count of the said information as relates to the said last-mentioned liberty and franchise, there is not, and from time whereof the memory of man is not to the contrary hath not been, a certain ancient and laudable custom there used and approved of, (that is to say) that the inhabitants and residents of and within the said vill for the time being should have and hold in every year in some convenient place for that purpose within the said vill, a certain fair to last three days, (to wit) on the 14th, 15th, and 16th days of September, unless any of those days should fall on Sunday, and when any of those days should fall on Sunday, then on such two of those days on which Sunday did not fall, and on the 17th day of September, for the buying and selling of all merchandizes, goods and chattels there, in manner and form as the said W. B. has in his said plea to so much of the said third count of the said information as relates to the said liberty and franchise therein secondly above specified in that behalf above alleged ; and this also the said Attorney-general of our said Lord the King, who prosecutes as aforesaid, for our said Lord the King prays may be inquired of by the country. And the said W. B. doth the like. And the said Attorney-general of our said Lord the King, who prosecutes as aforesaid, being now present here in court, and having heard the said plea of the said W. B., by him above pleaded as in that behalf as to the residue of the liberties and franchises in the said information particularly specified, for our said Lord the King says, as to the plea of the said W. B., by him above pleaded as last aforesaid, that since the said W. B. has in and by his last-mentioned plea in that behalf, alleged that he never used or exercised the said residue of the said liberties and franchises in the said information particularly specified, nor any of them, nor in the same, or any of them ever usurped upon our said Lord the King, in manner and form as by the

said information is supposed, but the same and every of them has \*disclaimed and disavowed; he, the said Attorney-general of our said Lord the King, who prosecutes as aforesaid, for our said Lord [328] the King prays judgment, and that the said W. B. do in nowise meddle with, and be in no way permitted or suffered to have, the said residue of the said liberties and franchises in the said information particularly specified, or any of them, and that he the said W. B. be from henceforth entirely and wholly excluded from the same liberties and franchises and every of them, and from the use and exercise of the same liberties and franchises and every of them: Whereupon the said last-mentioned plea of the said W. B., by him in manner and form aforesaid above pleaded as in that behalf as to the residue of the said liberties and franchises in the said information particularly specified, and all and singular the premises being seen and by the court here fully understood, it is considered that the said W. B. do in no wise intermeddle with, and be in no way permitted or suffered to have, the said residue of the said liberties and franchises in the said information particularly specified, or any of them, and that he the said W. B. be from henceforth entirely and wholly excluded from the said liberties and franchises and every of them, and from the use and exercise of the same liberties and franchises and every of them, &c.

For other forms of *ex officio* informations in the nature of *quo warranto*, see ante, 198.

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### No. 13.

*Quo Warranto* Information against the Mayor [or an Alderman or Councillor] of a Borough, exhibited by the Master of the Crown Office, at the instance of a Relator.

Of — term, in the — year of Queen Victoria.

*Lichfield.* } BE it remembered, That Charles Francis Robinson, Esq.,  
 } Coroner and Attorney of our present Sovereign Lady the Queen in the court of our said Lady the Queen before the Queen herself, who for our said Lady the Queen in this behalf prosecuteth, in his own proper person cometh here into the court of our said Lady the Queen before the Queen herself at Westminster, on [Friday] the — day of — in this same term, and for our said Lady the Queen, at the relation of E. F., of [the borough and city of Lichfield, surgeon,] according to the form of the statute in such case made and provided, giveth the court here to understand and be informed, That [the borough and \*city of Lichfield] is an [329] ancient borough and city, and that the [bailiffs and citizens] of the said borough and city for divers, to wit, ten years next before the passing of an act of Parliament, made and passed in the sixth year of the reign of the late King William the Fourth, intituled “An act to provide for the regulation of Municipal Corporations in England and Wales,” and until the first election of councillors in the said borough and city under the said act, that is to say, until the 26th day of December, in the year of our Lord 1835,

were one body corporate and politic in deed, fact, and name, by the name of the Bailiffs and Citizens of the city of Lichfield,<sup>(a)</sup> and since the said first election of councillors in the said borough and city under the said act, that is to say, from and after the said 26th day of December, in the year of our Lord 1835, have been and still are one body corporate and politic, by the name of the Mayor, Aldermen and Burgesses of the borough and city of Lichfield,<sup>(a)</sup> that is to say, at the borough and city of Lichfield aforesaid, in the county of the same city ;<sup>(b)</sup>] and that within the said borough and city, pursuant to the provisions of the said act, there of right ought to be one mayor, divers, to wit, six aldermen, and divers, to wit, eighteen councillors of the said borough and city, to be elected in the manner in the said act specified ; and that the place and office of mayor [or "an alderman," or "a councillor"] of the said borough and city is a public office and a place and office of great trust and pre-eminence within the said borough and city, touching the rule and government of the said borough and city, and the administration of public justice within the same, that is to say, at the borough and city of Lichfield aforesaid, in the county aforesaid ; and that J. S., late of [the borough and city of Lichfield, in the county aforesaid, merchant,] heretofore, to wit, on the — day of —, in the — year of the reign of our said present Sovereign Lady Victoria, by the grace of God, \*of the [ \*330 ] United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, at the borough and city of Lichfield aforesaid, in the county aforesaid, did use and exercise, and from thence continually afterwards to the time of exhibiting this information hath there used and exercised, and still doth there use and exercise, without an legal warrant, royal grant, or right whatsoever, the office of mayor [or "an alderman," or "a councillor"] of the said borough and city, and for and during all the time last above mentioned hath there claimed and still doth there claim to be mayor [or "an alderman," or "a councillor"] of the said borough and city, and to have, use, and enjoy all the liberties, privileges, and franchises to the office of mayor [or "an alderman," or "a councillor"] of the said borough and city belonging and appertaining ; which said offices, liberties, privileges, and franchises, he, the said J. S., for and during all the time last above mentioned, upon our said Lady the Queen, without any legal warrant, royal grant, or right whatsoever, hath usurped and still doth usurp, that is to say, at the borough and city of Lichfield aforesaid, in the county aforesaid ; in contempt of our said Lady the Queen, to the great damage and prejudice of her royal prerogative, and also against her crown and dignity. Whereupon the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen prayeth the consideration of the court here in the premises, and that due process of law may be awarded against him the said J. S. in this behalf, to make him answer to our said Lady the Queen, and shew by what

(a) Where the name of the corporation was not altered by the act of 5 & 6 Will. 4, c. 76, see post, No. 15, p. 331.

(b) *Semble*. That instead of the foregoing allegations it would be quite sufficient and even better to say, "That the borough and city of Lichfield is one of the boroughs named in the schedule (A), annexed to the act of Parliament made and passed in the sixth year of the reign of the late King William the Fourth, intituled "An Act to provide for the regulation of the Municipal Corporations in England and Wales;" and that within the said borough, &c. (as above.) See ante, 197.



authority he claims to have, use, and enjoy the office, liberties, privileges, and franchises aforesaid.

(Signed) C. F. ROBINSON.

#### No. 14.

Quo Warranto Information against an Auditor or Assessor.

*THE form is precisely the same as No. 13, supra, except, that instead of saying that within the said borough and city, pursuant to the provisions of the said act, there of right ought to be "one mayor, divers, to wit, six aldermen, and divers, to wit, eighteen councillors," say "divers, to wit, two auditors" [or "divers, to wit, two assessors"] of the said borough and city," and afterwards use the words "an auditor," or "an assessor" instead of "Mayor," &c.*

#### No. 15.

[\*331]

Quo Warranto Information against a Burgess [or Freeman.]

Of — term in the — year of Queen Victoria.

*Cheshire.* } BE it remembered, That Charles Francis Robinson, Esq.,  
 } coroner and attorney of our present Sovereign Lady the Queen  
 in the court of our said Lady the Queen before the Queen herself, who,  
 for our said Lady the Queen, in this behalf prosecuteth, in his own  
 proper person cometh here into the court of our said Lady the Queen  
 before the Queen herself at Westminster, on [Monday] the — day of  
 —, in this same term, and for our said Lady the Queen at the relation  
 of E. F., of [the borough of Macclesfield, in the county of Chester, grocer,]  
 according to the form of the statute in such case made and provided, giveth  
 the court here to understand and be informed That the borough of Maccles-  
 field in the county of Chester,<sup>(a)</sup> is an ancient borough, and that the  
 mayor, aldermen, and burgesses of the said borough, for divers, to wit, ten  
 years next before the passing of an act of Parliament, made and passed in  
 the sixth year of the reign of the late King William the Fourth, intituled  
 "An Act to provide for the regulation of Municipal Corporations in England  
 and Wales," were, and ever since have been, and still are one body corpo-  
 rate and politic, by the name of the Mayor Aldermen and Burgesses of the  
 borough of Macclesfield,<sup>(b)</sup> that is to say, at the borough of Macclesfield  
 aforesaid, in the county aforesaid; and that within the said borough, pur-  
 suant to the provisions of the said act, there of right ought to be an indefi-

(a) See Note (b), ante, p. 329.

(b) Where the name of the Corporation was altered by the act of 5 & 6 Will. 4, c. 76, see ante, No. 13, p. 329.

nite number of burgesses [or "freemen"] of the said borough duly qualified and inrolled as in the said act specified ; and that the place and office of a burgess [or "freeman"] of the said borough is a public office and franchise, and place and office of great trust and pre-eminence within the said borough, touching the rule and government of the said borough, and the election of councillors, auditors, and assessors for the said borough, that is to say, at the borough of Macclesfield aforesaid, in the county aforesaid ; and that J. S., late of [the borough of Macclesfield, in the county aforesaid, gentleman,] heretofore, to wit, on \*the — day of —, in the — year of the [\*332] reign of our said present Sovereign Lady Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, at the borough of Macclesfield aforesaid, in the county aforesaid, did use and exercise, and from thence continually afterwards to the time of exhibiting this information hath there used and exercised, and still doth there use and exercise, without any legal warrant, royal grant or right whatsoever, the office of a burgess [or "freeman"] of the said borough, and for and during all the time last above mentioned hath there claimed and still doth there claim to be a burgess [or "freeman"] of the said borough, and to have, use, and enjoy all the liberties, privileges and franchises to the office of a burgess [or "freeman"] of the said borough belonging and appertaining ; which said office, liberties, privileges, and franchises, he the said J. S., for and during all the time last above mentioned, upon our said Lady the Queen, without any legal warrant, royal grant or right whatsoever, hath usurped and still doth usurp, that is to say, at the borough of Macclesfield aforesaid, in the county aforesaid ; in contempt of our said Lady the Queen, to the great damage and prejudice of her royal prerogative, and also against her crown and dignity. Whereupon the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen prayeth the consideration of the court here in the premises, and that due process of law may be awarded against him the said J. S. in this behalf, to make him answer to our said Lady the Queen and show by what authority he claims to have, use, and enjoy the office, liberties, privileges, and franchises aforesaid.

(Signed) C. F. ROBINSON.

N. B. For other forms of quo warranto informations see ante, 198.

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### No. 16.

#### Subpoena to answer a Quo Warranto Information.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to J. S. We command you, that laying aside all excuses and pretences whatsoever, you be and appear in our court before us at Westminster, on —, to answer to us of such [\*333] \*matters and things as shall then and there be objected against you on our behalf ; and further, to do and receive all those things which our said court shall then order concerning you ; and this you are not to omit under the penalty of one hundred pounds, to be levied upon your goods and

chattels, lands and tenements, if you shall make default in the premises. Witness, Thomas Lord Denman, at Westminster, the — day of —, in the — year of our reign.

By the Court,  
ROBINSON.

(Indorsement.)

Charles Francis Robinson, Esq., coroner and attorney of our Lady the Queen, in the court of our said Lady the Queen, before the Queen herself, for our said Lady the Queen prosecuteth this writ against the within-named J. S., upon an information in the nature of a quo warranto, exhibited against him by the said Charles Francis Robinson in the said court to shew by what authority he claims to be mayor [or "an alderman," "councillor," &c., as the case may be,] of the borough of —, in the county of —.

No. 17.

Affidavit of Service of Subpœna.

In the Queen's Bench.

*Lichfield.*—The Queen against J. S.

I. K., Clerk to J. C., of &c., gentleman, make oath and saith, that he, this deponent, did on the — day of — instant, *personally*\* serve J. S., of —, [merchant], the above named defendant, with a true copy of the writ of subpœna hereunto annexed, and of the indorsement thereon, and that he this deponent did at the same time shew to the said J. S. the said original writ of subpœna and indorsement.

Sworn, &c.

I. K.

(a) If the service was not *personal*, (which is unnecessary,) the form of affidavit will be as follows:

That he, this deponent, did, on, &c., serve J. S., of, &c., merchant, the above-named defendant, with a true copy of \*the writ of subpœna hereunto annexed, and of the indorsement thereon, by delivering [\*334] such true copy to and leaving the same with the wife [or son, or servant, &c.] of the said J. S., at his place of residence, situate at —; and that he, this deponent, did at the same time shew to the said [wife] of the said J. S. the said original writ of subpœna and indorsement."

## No. 18.

Another Form of Affidavit of Service of Subpœna (not annexing the Writ to the Affidavit.)

In the Queen's Bench.

*Lichfield.*—The Queen against J. S.

I. K., clerk to J. C., of &c., gentleman, maketh oath and saith, that he, this deponent did on the — day of — instant, *personally* serve J. S., of —, [merchant], the above-named defendant, with a true copy of the writ of subpœna in this prosecution, and of the indorsement thereon, which said writ of subpœna appeared to this deponent to be regularly issued out of and under the seal of this honourable court; and a true copy of which said writ of subpœna, and of the indorsement thereon is hereunto annexed. [*If the service was not personal, omit the word "personally," and go on thus,*] — "by delivering such first-mentioned true copy of the said writ and indorsement to, and leaving the same with, the wife, *or* son, *or* servant, *as the case may be,*" of the said J. S., at his place of residence, situate at —;] and that he, this deponent, did at the same time shew to the said J. S. [*or* "to the said wife, &c., of the said J. S."] the said original writ of subpœna and indorsement.

Sworn, &c.

I. K.

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No. 19.

Attachment for not appearing to a Quo Warranto Information.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the Sheriff of —, greeting. We command you, that you do not forbear by reason of any liberty in your [\*335] *\*bailiwick*, but that you attach J. S., so that you may have his body before us, at Westminster, on —, to answer to us upon an information in the nature of a quo warranto, exhibited against him by Charles Francis Robinson, Esq., our coroner and attorney in our court before us to shew by what authority he claimeth to be mayor [*or* an alderman, councillor, &c. *as the case may be*] of the borough of —, in the county of —, whereof he is impeached; and have you then and there this writ. Witness, Thomas Lord Denman, at Westminster, the — day of —, in the — year of our reign.

By the Court,  
ROBINSON.

## No. 20.

Notice to appear to a Quo Warranto Information pursuant to Defendant's undertaking in an Enlarged Rule, &c. (ante, 201.)

In the Queen's Bench.

The Queen against J. S.

Upon an Information in the nature of a Quo Warranto.

**TAKE NOTICE,** That the information in this prosecution was filed this day [or on the — day of — instant,] and that unless an appearance thereto be entered for the defendant "immediately" or "within four days from the date hereof," or "on or before [Monday] next," pursuant to his undertaking in the rule of court made in this prosecution on [Monday, the — day of —, in the last term,(a)] the court will be moved on [Tuesday] next, or so soon after as counsel can be heard, for a writ of attachment against the defendant for his contempt. Dated the — day of —, 18—.

Yours, &c.

J. C.

Solicitor for the Prosecutor.

To J. S., the defendant, and also  
to Mr. I. K., his solicitor.

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\*No. 21.

[\*336]

Judgment for want of a Plea to a Quo Warranto Information.

AND now, that is to say, on —, in this same term, before our said Lady the Queen at Westminster, cometh the said J. S., in his proper person, and having heard the said information read, he prayeth a day to answer thereunto until on [Friday, &c.]; and it is granted to him before our said Lady the Queen at Westminster; the same day is given as well to the said Charles Francis Robinson, who prosecuteth for our said Lady the Queen in this behalf, as to the said J. S.: on which said [Friday, &c.,] before our said Lady the Queen at Westminster, cometh the said C. F. R., who for our said Lady the Queen in this behalf prosecuteth, in his proper person; and the said J. S., upon the fourth day of pleading, although being solemnly called to answer, doth not come nor doth he say any thing in bar or in abatement of the said information, nor doth he in any manner answer to the said information or to the premises in the said information specified, above charged upon him; wherefore our said Lady the Queen remaineth against him the said J. S. without defence in this behalf; whereupon all and singular the premises being seen and fully understood by the court of our said Lady the Queen now here, It is considered and adjudged by the said court here that he the said J. S. do not in any manner intermeddle with or concern himself in or about the office, liberties, privileges, and franchises aforesaid, but that he be absolutely forejudged and excluded from ever exercising or using the same or any of them for the future; and that the said J. S., in

(a) Sometimes a copy is annexed and referred to thus:—"A true copy whereof is hereunto annexed," or "above written," &c., as the case may be.

order to satisfy our said present Sovereign Lady the Queen, for and on account of the usurpation aforesaid, be taken and so forth ;(a) and that the said E. F., the relator above mentioned in this behalf, do recover against the said J. S. the sum of —, for his costs by him laid out and expended in carrying on his suit in this behalf, according to the form of the statute in such case made and provided.

[ \*327 ]

\*No. 22.

## Warrant to Disclaim.

I, J. S., of &c., merchant, do hereby authorise and desire you to enter or cause to be entered an appearance, and also a plea of disclaimer in my name to an information in the nature of a quo warranto exhibited against me in her Majesty's Court of Queen's Bench by Charles Francis Robinson, Esquire, coroner and attorney of our Lady the Queen in the court of our said Lady the Queen, before the Queen herself, for using and exercising the office of mayor [or "an alderman," or "a councillor,"] of the borough of —, in the county of —, in order that a judgment of ouster may be entered against me upon record : and for your so doing this shall be your sufficient warrant.

To Mr. —.

J. S.

No. 23.

## Disclaimer and Judgment thereon.

Of — Term, in the — year of Queen Victoria.

J. S.  
att.  
The Queen. } AND now, that is to say, on —, in this same term, before our  
said Lady the Queen at Westminster, cometh the said J. S. by  
G. B. B. his clerk in court, and having heard the said information  
read, he saith that he doth altogether disavow and disclaim the office, liberties,  
privileges, and franchises in the said information above specified, and  
cannot deny but that he hath usurped upon our said Lady the Queen the  
said office, liberties, privileges, and franchises in the said information above  
mentioned, and confesseth and acknowledgeth the said usurpation in manner  
and form as in the said information is above alleged ; and thereupon he  
putteth himself upon the mercy of our said Lady the Queen : whereupon  
all and singular the premises being seen and fully understood by the court  
of our said Lady the Queen now here, It is considered and adjudged by the  
said court here, that he the said J. S. do not in any manner intermeddle with  
or concern himself in or about the office, liberties, privileges, and franchises  
aforesaid, but that he be absolutely forejudged and excluded from ever exer-

(a) The concluding part of the judgment (as to costs) should be omitted when the information does not relate to any corporate office, or franchise of a corporate nature in a corporate place within the 9 Ann. c. 20. See ante, 122. 237.

cising or using the same, or any of them, for the future; and that he the said J. S., in order to satisfy our said \*present Sovereign Lady the Queen, for and on account of the usurpation aforesaid, be taken and [\*338] so forth; and that the said E. F., the relator above mentioned in this behalf, do recover against the said J. S. the sum of —, for his costs by him laid out and expended in carrying on his suit in this behalf, according to the form of the statute in such case made and provided.

See note to No. 21, ante, p. 336.

No. 24.

Demurrer (General or Special) to a Quo Warranto Information—Joinder—Cur. adv. vult.  
—Judgment for the Crown.

Of — Term, in the — year of Queen Victoria.

J. S. } AND now, that is to say, on —, in this same term, before our  
 als. } said Lady the Queen at Westminster, cometh the said J. S., by  
 The Queen. } G. B. B. his clerk in court, and having heard the said information read, he says, that our said Lady the Queen ought not to impeach or implead him the said J. S. by reason of the premises in the said information above mentioned and specified, because he says that the said information and the matters therein contained are not sufficient in law, and that he need not, nor is he obliged by the law of the land, to answer thereto; and this he is ready to verify; wherefore, and because of the insufficiency of the said information, the said J. S. prays judgment, and that he may be dismissed and discharged by the court here of and from the premises above charged upon him in form aforesaid. [*If the demurrer be special, proceed thus* :—And the said J. S., according to the form of the statutes in such case made and provided, sets down and shews to the court here the following causes of demurrer to the said information (that is to say), for that [&c.].

*Joinder in Demurrer.*]—And the said coroner and attorney of our said Lady the Queen for our said Lady the Queen saith, that the said information and the matters therein contained are sufficient in law; and this the said coroner and attorney of our said Lady the Queen for our said Lady the Queen is ready to verify and prove as the court shall award; wherefore, inasmuch as the said J. S. hath not answered to the said information, nor in anywise \*denied the matters therein contained, he the said [\*339] coroner and attorney of our said Lady the Queen for our said Lady the Queen prayeth judgment, and that the said J. S. may be convicted of the premises above charged upon him, and may be forejudged and excluded of and from the [office], liberties, privileges, and franchises aforesaid.

*Cur. adv. vult.*]—And because the court of our said Lady the Queen now here is not yet advised about giving their judgment of and concerning the premises aforesaid, a day is therefore given as well to the said C. F. R., who for our said Lady the Queen in this behalf prosecuteth, as to the said J. S., before our said Lady the Queen, until on [Monday, &c.], wheresoever she shall then be in England, to hear their judgment thereupon, for

that the said court of our said Lady the Queen now here is not as yet advised thereupon.

At which time, (to wit) on [Monday, &c.], before our said Lady the Queen at Westminster, come as well the said C. F. R., who for our said Lady the Queen in this behalf prosecuteth, as the said J. S. by-his clerk in court aforesaid; and because the court of our said Lady the Queen now here is not as yet advised about giving their judgment of and concerning the premises aforesaid, a day is therefore further given as well to the said C. F. R., who for our said Lady the Queen in this behalf prosecuteth, as to the said J. S., until on [Wednesday, &c.], before our said Lady the Queen, wheresoever she shall then be in England, to hear their judgment thereupon, for that the said court of our said Lady the Queen now here is not as yet advised thereupon.

*Judgment.*—At which time (to wit), on [Wednesday, &c.], before our said Lady the Queen at Westminster, came as well the said C. F. R., who for our said Lady the Queen in this behalf prosecuteth, as the said J. S. by his clerk in court aforesaid: whereupon all and singular the premises being seen and fully understood by the court of our said Lady the Queen now here, upon mature deliberation thereupon had, it is considered and adjudged by the said court here that the said information and the matters therein contained are sufficient in law: It is thereupon considered and adjudged that the said J. S. do not in any manner intermeddle with or concern himself in or about the office, liberties, privileges, and franchises aforesaid, but that he be absolutely forejudged and excluded from ever exercising or using the same, or any of them, for the future; and that the said J. S., in order to satisfy our said present Sovereign Lady the Queen, for and on account of [\*340] the usurpation aforesaid, be taken and so forth; and that the said E. F., the relator above mentioned in this behalf, do recover against the said J. S. the sum of —, for his costs by him laid out and expended in carrying on his suit in this behalf, according the form of the statute in such case made and provided.

See note to No. 21, ante, p. 336.

## No. 25.

Plea that the Defendant did not use or exercise the said Office, nor claim the said Liberties, Privileges, and Franchises, &c.

Of — Term, in the — year of Queen Victoria.

<p>J. S. ats. The Queen.</p>	}	<p>AND now (that is to say) on [Friday, the — day of —,] in this same term, before our said Lady the Queen at Westminster, cometh the aforesaid J. S. by G. B. B. his clerk in court, and having heard the said information read, he says that, under colour of the premises contained in the said information, he is greatly troubled and vexed, and that by no means justly, because protesting that the said information and the matters therein contained are not sufficient in law, and that he need not nor is obliged by law to give any answer thereto, yet for plea in this</p>
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behalf the said J. S. says, that he did not use nor exercise the said office of mayor [*or* “an alderman,” “a councillor,” &c.] of the said borough, nor claim to be [mayor, &c.] of the said borough, nor to have, use, and enjoy the liberties, privileges, and franchises to the said office of [mayor, &c.] of the said borough belonging and appertaining, or any part thereof, in manner and form as by the said information is above laid to his charge; and of this he puts himself upon the country, &c.

*Similiter.*—And the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen, doth the like, &c.

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\*No. 26.

[\*341]

Commencement of a Second or subsequent Plea.

AND for a further and subsequent Plea in this behalf, the said J. S., by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that [&c.]

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No. 27.

Plea as to part of the Time in the Information specified a Confession of the Usurpation, and as to the residue of a Justification shewing the Defendant's Election, &c.(a.)

Of — Term, in the — year of Queen Victoria.

J. S. } AND now, that is to say, on [Friday, the — day of —]  
 als. } in this same term, before our said Lady the Queen at West-  
 The Queen. } minster, cometh the aforesaid J. S., by G. B. B. his clerk in court, and  
 having heard the said information read, as to so much thereof as charges him the said J. S. with having used and exercised the said office of [an alderman] of the said borough of —, on the — day of —, in the — year of the reign of our said present Sovereign Lady Victoria, and from thence continually afterwards until and on the — day of — in the same — year of the reign of our said Sovereign Lady Victoria, and during all that time there claiming to be an alderman of the said borough, to have, use, and enjoy all the liberties, privileges, and franchises to the office of an alderman of the said borough belonging and appertaining, and during all that time usurping upon our said Lady the Queen the said office, liberties, privileges, and franchises in manner and form as in the said information is above in that behalf charged upon him, the said J. S. saith, that he doth altogether disavow and disclaim the said office, liberties, privileges, and franchises during the time in this plea above mentioned, and cannot deny but that he did during all that time usurp upon our said Lady the Queen the said \*office, liberties, privileges, and franchises in man-  
 ner and form as in the said information is above in that behalf [\*342]

(a) See ante, pp. 211. 238.

alleged; and thereupon he putteth himself upon the mercy of our said Lady the Queen: and as to the residue of the said information, that is to say, as to so much thereof as charges him the said J. S. with having used and exercised the said office of an alderman of the said borough of —, on the — day of — [*the next day after the last one mentioned in the previous plea,*] in the same — year of the reign of our said Sovereign Lady Victoria, and from thence continually afterwards to the time of exhibiting the said information, and during all that time there claiming and still there claiming to be an alderman of the said borough, and to have, use, and enjoy all the liberties, privileges, and franchises to the office of an alderman of the said borough belonging and appertaining, and during all that time usurping and still usurping upon our said Lady the Queen the said office, liberties, privileges, and franchises in manner and form as in the said information is above in that behalf charged upon him, the said J. S. complains that he is by colour thereof greatly troubled and vexed, and that unjustly, because he saith that true it is that the said borough of — is an ancient borough, and that [*here follow the language of the preliminary allegations in the information, and proceed to shew the defendant's qualification and election, &c., as in other cases, see post, No. 29.*] By virtue whereof he the said J. S. afterwards, for all the time in the introductory part of this plea mentioned, hath used and exercised, and still doth use and exercise the office of an alderman of the said borough, and hath there claimed, and still doth there claim, to be an alderman of the said borough, and to have, use, and enjoy all the liberties, privileges, and franchises to the office of an alderman of the said borough belonging and appertaining, as it was lawful for him to do. Without this, that he the said J. S., during all or any part of the time in the introductory part of this plea mentioned, hath usurped the said office, liberties, privileges, and franchises, or any part thereof, upon our said Lady the Queen, in manner and form as in the said information is above in that behalf alleged; and this he the said J. S. is ready to verify, &c.; wherefore he prays judgment, and that the said office, liberties, privileges and franchises in form aforesaid claimed by him, may for the future be allowed to him, and that he may be dismissed and discharged by the court here of and from the premises in the introductory part of this plea mentioned.

(Signed) W. R. COLE.

[\*343]

\*No. 28.

Plea by the Mayor of a Borough, shewing his Election, &c.

Of — Term, in the — year of Queen Victoria.

<p>J. S. att. The Queen.</p>	}	<p>AND now, that is to say, on —, the — day of —, in this same term, before our said Lady the Queen at Westminster, cometh the aforesaid J. S., by G. B. B. his clerk in court, and, having heard the said information read, complains that he is by colour thereof greatly troubled and vexed, and that unjustly; because, protesting that the said information, and the matters therein contained, are not sufficient in law,</p>
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(a) Here follow the language of the information.

and that he the said J. S. is not bound by the law of the land to answer the same ; yet for plea in this behalf, the said J. S. saith, that true it is that (a) the said borough and city of Lichfield is an ancient borough and city, and that the bailiffs and citizens of the said borough and city for divers, to wit, ten years next before the passing of the said act of Parliament in the said information mentioned, and until the first election of councillors in the said borough and city, under the said act, that is to say, until the 26th day of December, in the year of our Lord 1835, were one body corporate and politic in deed, fact, and name, by the name of the bailiffs and citizens of the city of Lichfield, and since the said first election of councillors in the said borough and city, under the said act, that is to say, from and after the said 26th day of December, in the year of our Lord 1835, have been and still are one body corporate and politic by the name of the Mayor, Aldermen, Burgesses of the borough and city of Lichfield, that is to say, at the borough and city of Lichfield aforesaid, in the county of the same city ; and that within the said borough and city, pursuant to the provisions of the said act, there of right ought to be one mayor, divers, to wit, six aldermen, and divers, to wit, eighteen councillors of the said borough and city, to be elected in the manner in the said act specified ; and that the place and office of mayor of the said borough and city is a public office and a place and office of great trust and pre-eminence within the said borough and city, touching the rule and government of the said \*borough and [\*344] city, and the administration of public justice within the same, that is to say, at the borough and city of Lichfield aforesaid, in the county of the same city, as in the said information is above suggested ; but the said J. S. further saith, that before and at the time of the election hereinafter mentioned, to wit, at the borough and city of Lichfield aforesaid, in the county aforesaid, he the said J. S. was an alderman [or "a councillor"] of the said borough and city, and a fit person duly qualified, according to the provisions of the said act, to be elected and to be the mayor of the said borough and city ; and that, upon the 9th day of November, in the year of our Lord 1841 (being the day in and by the said act appointed for the election of a fit person to be the mayor of the said borough and city,) at the borough and city of Lichfield aforesaid, in the county aforesaid, he the said J. S., so being such alderman [or "councillor,"] and duly qualified as aforesaid, was then and there duly elected by the council of the said borough and city to be the mayor of the said borough and city, according to the provisions of the said act ; and the said J. S., further saith, that 'he the said J. S. being so elected to be the mayor of the said borough and city, did afterwards, and before he the said J. S. in any way acted as such mayor, to wit, on the day and year last aforesaid, at the borough and city aforesaid, in the county aforesaid, before A. B. and C. D., who then and there were two of the [councillors] of the said borough and city, duly make and subscribe the declaration in that behalf prescribed and required in and by the said act of Parliament, according to the provisions of the said act, and then and there accepted the said office of mayor of the said borough and city of Lichfield, and then and there became, and was, and still is the mayor of the said borough and city ; by virtue whereof, he the said J. S., for all the time in the said information in that behalf mentioned, hath used

(a) Here follow the language of the information.

and exercised, and still doth use and exercise, the office of mayor of the said borough and city, and hath there claimed, and still doth there claim, to be the mayor of the said borough and city, and to have, use, and enjoy all the liberties, privileges, and franchises to the office of mayor of the said borough and city belonging and appertaining, as it was lawful for him to do. Without this, that he the said J. S. hath usurped the said office, liberties, privileges, and franchises, or any part thereof, upon our said Lady the Queen, in manner and form as in the said information is above supposed: and this he the said J. S. is ready to verify, &c.; wherefore he prays judgment, and [\*345] that the said office, liberties, \*privileges, and franchises in form aforesaid claimed by him, may for the future be allowed to him, and that he may be dismissed and discharged by the court here of and from the premises aforesaid.

(Signed) W. R. COLE.

### No. 29.

Plea by an Alderman of a Borough, shewing his Election, &c.

Of — Term, in the — year of Queen Victoria.

J. S. } AND now, that is to say, on —, the — day of —, in  
 The Queen. } this same term, before our said Lady the Queen at Westminster, cometh the aforesaid J. S., by G. B. B. his clerk in court, and, having heard the said information read complains that he is by colour thereof greatly troubled and vexed, and that unjustly; because, protesting that the said information, and the matters therein contained, are not sufficient in law, and that he the said J. S. is not bound by the law of the land to answer the same; yet, for plea in this behalf, the said J. S. saith, that true, it is that(a) the borough and city of Lichfield is an ancient borough and city and that the bailiffs and citizens of the said borough and city for divers, to wit, ten years next before the passing of the said act of Parliament in the said information mentioned, and until the first election of councillors in the said borough and city under the said act, that is to say, until the 26th day of December, in the year of our Lord 1835, were one body corporate and politic in deed, fact, and name, by the name of the bailiffs and citizens of the city of Lichfield, and since the said first election of councillors in the said borough and city under the said act, that is to say, from and after the said 26th day of December, in the year of our Lord 1835, have been and still are one body corporate and politic, by the name of The Mayor Aldermen and Burgesses of the borough and city of Lichfield, that is to say, at the borough and city of Lichfield aforesaid, in the county of the same city; and that within the said borough and city, pursuant to the provisions of the said act, there, of right, ought to be one mayor, divers, to wit, six [\*346] \*aldermen, and divers, to wit, eighteen councillors of the said borough and city, to be elected in the manner in the said act speci-

(a) Here follow the language of the information.

fied; and that the place and office of an alderman of the said borough and city is a public office, and a place and office of great trust and pre-eminence within the said borough and city, touching the rule and government of the said borough and city, and the administration of public justice within the same, that is to say, at the borough and city of Lichfield aforesaid, in the county of the same city, as in the said information is above suggested; but the said J. S. further saith, that, under and by virtue of the said act, one-half of the whole number of the aldermen of the said borough and city, to wit, three of the said aldermen were, upon the 9th day of November, in the year 1838, and in every third succeeding year, to go out of office according to the provisions of the said act; and the said J. S. further saith, that on the 9th day of November, in the year of our Lord 1841, (being one of the years in that behalf so appointed as aforesaid,) at the borough and city of Lichfield aforesaid, in the county aforesaid, one-half of the whole number of the aldermen of the said borough and city, to wit, three of the said aldermen who had then been aldermen of the said borough and city for the longest time without re-election, went out of office according to the provisions of the said act; and the said J. S. further saith, that before and at the time of the election hereinafter mentioned, to wit, at the borough and city of Lichfield aforesaid, in the county aforesaid, he the said J. S. was an inrolled burgess of the said borough and city, and he the said J. S. then and there was a councillor [*or say* "duly qualified to be a councillor"] of the said borough and city, and he the said J. S. then and there was duly qualified according to the provisions of the said act, to be elected and to be an alderman of the said borough and city; and the said J. S. further saith, that afterwards, to wit, on the same 9th day of November, in the year 1841 aforesaid, at the borough and city of Lichfield aforesaid, in the county aforesaid, he the said J. S. so being such inrolled burgess [and councillor,] and duly qualified as aforesaid, was then and there duly elected by the council of the said borough and city to be an alderman of the said borough and city, to supply the place of one of the said aldermen, who so went out of office as aforesaid, according to the provisions of the said act; and the said J. S. further saith, that he the said J. S., being so elected to be an alderman of the said borough and city, did afterwards, and before he the said J. S. in any way acted as such alderman, to wit, on the day and year last aforesaid, \*at the borough and city aforesaid, in the county aforesaid, before A. B. and C. D., who then and there were two of the [councillors] [\*347] of the said borough and city, duly make and subscribe the declaration in that behalf prescribed and required in and by the said act of Parliament, according to the provisions of the said act, and then and there accepted the said office of an alderman of the said borough and city of Lichfield, and then and there became and was and still is an alderman of the said borough and city; by virtue whereof he the said J. S., for all the time in the said information in that behalf mentioned, hath used and exercised, and still doth use and exercise, the office of an alderman of the said borough and city, and hath there claimed, and still doth there claim, to be an alderman of the said borough and city, and to have, use, and enjoy all the liberties, privileges, and franchises to the office of an alderman of the said borough and city belonging and appertaining, as it was lawful for him to do. Without this, that he the said J. S. hath usurped the said office, liberties, privileges, and

franchises, or any part thereof, upon our said Lady the Queen, in manner and form as in the said information is above supposed: and this he the said J. S. is ready to verify, &c.; wherefore he prays judgment, and that the said office, liberties, privileges, and franchises in form aforesaid claimed by him, may for the future be allowed to him, and that he may be dismissed and discharged by the court here of and from the premises aforesaid.

(Signed) W. R. COLE.

### No. 30.

Plea by a Councillor of a Borough, shewing his Election, &c.

Of — Term, in the — year of Queen Victoria.

J. S. } AND now, that is to say, on —, the — day of —, in  
 The Queen. } this same term, before our said Lady the Queen at Westminster, cometh the aforesaid J. S., by G. B. B. his clerk in court, and having heard the said information read, complains that he is by colour thereof greatly troubled and vexed, and that unjustly: because, protesting that the said information and the matters therein contained are not sufficient in law, and that he the said J. S. is not bound by the law of the land to answer the same, yet, for plea in this \*behalf, the said J. S. saith that true it is [348] that (a) the borough and city of Lichfield is an ancient borough and city, and that the bailiffs and citizens of the said borough and city, for divers (to wit) ten years next before the passing of the said act of Parliament in the said information mentioned, and until the first election of councillors in the said borough and city under the said act, that is to say, until the 26th day of December, in the year of our Lord 1835, were one body corporate and politic, in deed, fact, and name, by the name of the bailiffs and citizens of the city of Lichfield, and since the said first election of councillors in the said borough and city under the said act, that is to say, from and after the said 26th day of December, in the year of our Lord 1835, have been and still are one body politic and corporate, by the name of The Mayor, Aldermen and Burgesses of the borough and city of Lichfield, that is to say, at the borough and city of Lichfield aforesaid, in the county of the same city; and that within the said borough and city, pursuant to the provisions of the said act, there of right ought to be one mayor, divers, to wit, six aldermen, and divers, to wit, eighteen councillors of the said borough and city, to be elected in the manner in the said act specified; and that the place and office of a councillor of the said borough and city is a public office, and a place and office of great trust and pre-eminence within the said borough and city, touching the rule and government of the said borough and city, and the administration of public justice within the same, that is to say, at the borough and city of Lichfield aforesaid, in the county of the same city, as in the said information is above suggested; but the said J. S. further saith, that after the passing of the said act of Parliament, to wit, on the 1st day of November, in the year of our Lord 1835, at the borough and city of Lichfield aforesaid, in the county aforesaid, the said borough and city of Lich-

(a) Here follow the language of the information.

field, for the purposes of the said act, was, and from thenceforth hath been, and still is duly divided into two wards, under the provisions of the said act, the extent, limits, and boundary lines of the said wards having been in due time in that behalf, to wit, within the space of six weeks next after the passing of the said act, to wit, on the — day of October, in the year last aforesaid, at the borough and city of Lichfield aforesaid, in the county aforesaid, duly determined and set out, and copies of the particulars \*of the said division having been (to wit) then and there duly transmitted, published, and delivered, according to the provisions of the [\*349] said act; and the said J. S. further saith, that one of the said wards into which the said borough and city was so divided as aforesaid, then and there was and still is called and known as the North Ward, and the other of the said wards then and there was and still is called and known as the South Ward, and that afterwards, to wit, on the day and year last aforesaid, at the borough and city of Lichfield aforesaid, in the county aforesaid, the number of councillors mentioned in conjunction with the name of such borough and city in the schedule (A.), to the said act annexed, to wit, the number of eighteen councillors, was duly apportioned among the said two wards of the said borough and city, according to the provisions of the said act, and that nine of such councillors were then and there duly assigned to each of the said wards, according to the provisions of the said act, and the number so assigned to each ward of the said borough and city was then and there duly published according to the provisions of the said act, and that under and by virtue of the said act, one third part of the said nine councillors so apportioned and assigned to each of the said wards as aforesaid, was upon the 1st day of November in the year 1836, and in every succeeding year, to go out of office according to the provisions of the said act; and the said J. S. further saith, that on the 1st day of November in the year of our Lord 1841, at the borough and city of Lichfield aforesaid, in the county aforesaid, one third part of the whole number of councillors assigned to and elected in the said South Ward of the said borough and city, to wit, three of the said councillors, who had then been for the longest time in office without re-election, went out of office according to the provisions of the said act, and that afterwards, to wit, on the same day and year last aforesaid, in the borough and city of Lichfield aforesaid, in the county aforesaid, an election of three councillors, to supply the places of those who so went out of office, as aforesaid, was duly held according to the provisions of the said act, before T. A. Esq., an alderman of the said borough and city, (he the said T. A. then and there being the alderman duly appointed in that behalf, by the the councillors chosen in the said South Ward,) and before A. B. and C. D., who then and there were the two assessors of the said South Ward; and the said J. S. further saith, that before and at the time of the said election, to wit, at the borough and city of Lichfield aforesaid, in the county aforesaid, he, the said J. S., was an inrolled burgess of the said borough and \*city, and he the said J. S. was then and there duly qualified [\*350] according to the provisions of the said act to be elected and to be a councillor of the said borough and city, in the said South Ward, under and by virtue of the said act; and that he the said J. S., being such inrolled burgess, so qualified as aforesaid, was then and there a candidate to be elected and chosen one of the councillors of the said borough and city,

in the said South Ward, to supply the place of one of those councillors who had then so gone out of office as aforesaid; and that at the said election so held as aforesaid, the burgesses of the said South Ward, duly inrolled as the said act requires, did openly assemble, and did then and there elect and choose him the said J. S. to be a councillor of the said borough and city, according to the provisions of the said act, and that at the conclusion of the said election, the said aldermen and assessors did then and there examine the voting papers delivered to them at the said election, and did then and there ascertain and declare the said J. S. to be duly elected a councillor of the said borough and city, in the said South Ward, according to the provisions of the said act, and he the said J. S. then and there was duly elected such councillor as aforesaid; and the said J. S. further saith, that he the said J. S., being so elected such councillor as aforesaid, did afterwards, and before he the said J. S. in any way acted as such councillor as aforesaid, (except as in the said act is in that behalf excepted and permitted), to wit, on the day and year last aforesaid, at the borough and city of Lichfield aforesaid, in the county aforesaid, before E. F. and G. H., who then and there were two of the [councillors] of the said borough and city, duly make and subscribe the declaration in that behalf prescribed and required in and by the said act of Parliament, according to the provisions of the said act, and then and there accepted the said office of a councillor of the said borough and city of Lichfield, and then and there became, and was, and still is a councillor of the said borough and city; by virtue whereof he the said J. S., for all the time in the said information in that behalf mentioned, hath used and exercised, and doth use and exercise, the office of a councillor of the said borough and city, and hath there claimed, and still doth there claim, to be a councillor of the said borough and city, and to have, use, and enjoy all the liberties, privileges, and franchises to the office of a councillor of the said borough and city belonging and appertaining, as it was lawful for him to do: without this, that he the said J. S. hath usurped the said office, liberties, privileges, and franchises, or any part thereof, upon our said Lady [\*351] the Queen, in manner and \*form as in the said information is above supposed, and this he the said J. S. is ready to verify, &c.; wherefore he prays judgment, and that the said office, liberties, privileges, and franchises, in form aforesaid claimed by him, may for the future be allowed to him, and that he may be dismissed and discharged by the court here of and from the premises aforesaid.

(Signed)

W. R. COLE.

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 No. 31.

Plea by a Councillor, showing his election to an extraordinary Vacancy, occasioned by the Absence for more than Six Months of one W. T., whose office of Councillor was thereupon declared vacant.

Of Michaelmas Term, in the sixth year of Queen Victoria.

W. G.,  
als.  
The Queen.

} AND now, that is to say, on Wednesday, the second day of November, in this same term, before our said Lady the Queen at Westminster, cometh the aforesaid W. G., by G. B. B. his



clerk in court, and having heard the said information read, he says that under colour of the premises contained in the said information, he is greatly troubled and vexed, and that by no means justly; because, protesting that the said information and the matters therein contained are not sufficient in law, and that he need not, nor is obliged by law to give any answer thereto; [Protesting also that the said burgesses(a) of the said borough and city of Lichfield were not nor are one body corporate and politic in deed, fact, and name, as in the said information is above alleged;] For plea, nevertheless, in this behalf, the said W. G. saith, that the said borough and city of Lichfield is an ancient borough and city, and that the bailiffs and citizens of the said borough and city for divers (to wit) ten years next before the passing of the said act of Parliament, in the said information mentioned, were one body corporate and politic in deed, fact, and name, by the name of The Bailiffs and Citizens of the City of Lichfield, and since the passing of the said act of Parliament, that is to say, from and after \*the 28th day [\*352] of December, in the sixth year of the reign of the late King William the Fourth, have been and still are one body corporate and politic, by the name of The Mayor, Aldermen and Burgesses of the Borough and City of Lichfield, that is to say, at the borough and city of Lichfield aforesaid, in the county of the same city; and that within the said borough and city, pursuant to the provisions of the said act, there of right ought to be one mayor, divers to wit six aldermen, and divers to wit eighteen councillors of the said borough and city; and that the place and office of a councillor of the said borough and city is a public office, and a place and office of great trust and pre-eminence within the said borough and city, touching the rule and government of the said borough and city, that is to say, at the borough and city of Lichfield aforesaid, in the county of the same city; and the said W. G. further saith, that under and by virtue of the said act of Parliament, the said borough and city for the purposes of the said act, before the first election made under and by virtue of the said act, to wit, on the 7th day of November, in the year of our Lord 1835, at the borough and city of Lichfield aforesaid, in the county aforesaid, was and still is duly divided into two wards, one called or known as the North Ward, and the other called or known as the South Ward, and the extent, limits, and boundary lines of such wards respectively, and the portions of the said borough and city included therein respectively, were then and there duly determined and set out according to the provisions of the said act, and the particulars thereof were then and there approved of and published according to the said act; and that afterwards, to wit, on the day and year last aforesaid, at the borough and city of Lichfield aforesaid, in the county aforesaid, the number of councillors mentioned in conjunction with the name of such borough and city in the schedule (A.) to the said act annexed, to wit, the number of eighteen councillors was duly appointed among the two said wards of the said borough and city according to the provisions of the said act; and that nine of such councillors were then and there duly assigned to each of the said wards, according to the provisions of the said act; and that the number so assigned to each ward of the said borough and city was then and there duly

(a) The information in this case incorrectly stated that "The Burgesses," instead of "The Bailiffs and Citizens," were one body corporate, &c.

published according to the provisions of the said act; and the said W. G. further saith, that on the 2nd day of November, in the year of our Lord, 1840, (the 1st day of November in that year being on a Sunday,) at the borough and city of Lichfield aforesaid, in the county aforesaid, [\*353] one third part of the whole number of councillors assigned to and elected in the said South Ward of the said borough and city, to wit, three of the said councillors who had then been for the longest time in office without re-election, went out of office according to the provisions of the said act; and that afterwards, to wit, on the same day and year last aforesaid, in the borough and city of Lichfield aforesaid, in the county aforesaid, an election of three councillors to supply the places of those who so went out of office as aforesaid, was duly held before J. W., Esquire, an alderman of the said borough and city, (he the said J. W. then and there being the alderman duly appointed in that behalf by the councillors chosen in the said South Ward) and before T. P. and W. H. the then two deputy assessors and proper officers in that behalf for the said South Ward; and that at such election, so held as aforesaid, the burgesses of the said South Ward, duly inrolled as the said act requires, did openly assemble and did then and there elect and choose one W. T. to be a councillor of the said borough and city for the said South Ward according to the provisions of the said act, he the said W. T. then and there being duly qualified according to the provisions of the said act, to be elected and to be such councillor as aforesaid; and the said W. T. was then and there duly elected and declared to be such councillor as aforesaid, according to the provisions of the said act; and the said W. T. then and there, before two of the council of the said borough and city, duly made and subscribed the declaration in that behalf prescribed and required in and by the said act, and then and there accepted and took upon himself the said office, and became and was a councillor of the said borough and city, and continued to be such councillor as aforesaid, and until his said office became void as hereinafter mentioned; and the said W. G. further saith, that afterwards and whilst the said W. T. was and continued to be such councillor as aforesaid, to wit, on the 30th day of March, in the year of our Lord, 1841, at the borough and city of Lichfield aforesaid, in the county aforesaid, he the said W. T. left the said borough and city, and then continued absent from the said borough and city for more than six months at one and the same time, and that such absence was not owing to or occasioned by illness; and that the council of the said borough and city did thereupon forthwith, according to the provisions of the said act, declare the said office of the said W. T. to be void, to wit, on the 30th day of October, in the year of our Lord 1841, at the [\*354] borough and city of Lichfield aforesaid, in the county aforesaid; and the said council did then and there signify the same by notice in writing under the hands of three of them, countersigned by the town clerk of the said borough and city, and affixed on the outer door of Guildhall of the said borough and city, (being a public place within the said borough and city,) according to the provisions of the said act; and that the said office of the said W. T. did thereupon become void, according to the provisions of the said act, to wit, on the day and year last aforesaid, at the borough and city of Lichfield aforesaid, in the county aforesaid; and the said W. G. further saith, that an extraordinary vacancy in the said office of

councillor of the said borough and city in the said South Ward having been so occasioned as aforesaid, T. A., Esq., the then alderman of the said South Ward, did, according to the form of the statutes in such case made and provided, to wit, on the day and year last aforesaid, at the borough and city of Lichfield aforesaid, in the county aforesaid, fix and appoint a day for an election to supply such vacancy, to wit, the day on which the election hereinafter mentioned was held, such day not being later than ten days after such vacancy so declared and signified as aforesaid; and the said W. G. further saith, that afterwards, to wit, on the 1st day of November, in the year of our Lord 1841, at the borough and city of Lichfield aforesaid, in the county aforesaid, one third part of the whole number of councillors assigned to and elected in the said South Ward of the said borough and city, to wit, three of the said councillors who had then been for the longest time in office without re-election went out of office, according to the provisions of the said act, and that afterwards, to wit, on the same day and year last aforesaid, in the borough and city of Lichfield aforesaid, in the county aforesaid, an election of three councillors to supply the places of those who so went out of office as last aforesaid (being the ordinary vacancies,) and of one councillor to supply the said extraordinary vacancy in the said office of the said W. T., was duly held according to the provisions of the said act, before T. A., Esq., an alderman of the said borough and city, (he the said T. A. then and there being the alderman duly appointed in that behalf by the councillors chosen in the said South Ward,) and before W. V., the then only assessor of the said South Ward, W. P. the other assessor of the said South Ward being then and there dead; and the said W. G. further saith, that before and at the time of the last-mentioned election, to wit, at the borough and city of Lichfield aforesaid, in the county aforesaid, he the said W. G. was duly qualified, according to the provisions of the said act, to be elected and to be a councillor of the said [\*355] borough, and city in the said South Ward, under and by virtue of the said act; and that he the said W. G. being so qualified, was then and there a candidate to be elected and chosen a councillor of the said borough and city in the said South Ward, to supply the place of the said W. T. whose office had so become void as aforesaid; (a) and that he the said W. G. was not a candidate to be elected and chosen one of the councillors of the said borough and city of the said South Ward, to supply the place of one of those three councillors who had then so gone out of office as last aforesaid; of all which last-mentioned premises the said burgesses of the said South Ward, and also the said alderman and assessor, then and there had notice and well knew; and the said W. G. further saith, that at the said last-mentioned election, so held as aforesaid, the burgesses of the said South Ward, duly inrolled as the said act requires, did openly assemble and did then and there elect and chose him the said W. G. to be a councillor of the said borough and city, in the said South Ward, (to supply the said extraordinary vacancy in the place and office of the said W. T.,) *in manner and form following, that is to say,* (b) a majority of the said burgesses entitled to vote at the said

(a) The object of the succeeding allegations is to shew that under the circumstances it was not necessary for the voting papers to make the distinction suggested in the next note.

(b) The supposed irregularity in the defendant's election was, that the voting papers did not on the face of them distinguish which of the persons voted for were intended to

election did then and there deliver to the said T. A. and W. V., who as such alderman and assessor as aforesaid then presided at the said election, their respective voting papers, containing the Christian names and surnames of the persons for whom they respectively voted (not exceeding the number of councillors then to be chosen as aforesaid,) with their respective places of abode and descriptions (including therein the Christian name and surname of the said W. G., with his \*place of abode and description,) such [\*356] papers respectively being previously signed with the name of the burgess voting, and with the name of the street, lane, or other place, in which the property for which he appeared to be rated on the burgess roll of the said borough and city was then situated; and at the conclusion of the said election the said T. A. and W. T., as such alderman and assessor as aforesaid, did then and there examine the voting papers so delivered to them at the said election as aforesaid, for the purpose of ascertaining which of the several persons voted for were elected, and did then and there ascertain and declare the said W. G. to be elected a councillor of the said borough and city, in the said South Ward, to supply the said extraordinary vacancy in the place and office of the said W. T. And the said W. G. further saith, that the said T. A. and W. V. did afterwards and within the time in that behalf limited in and by the said act, to wit, on the 3rd day of November in the year last aforesaid, before two of the clock in the afternoon of the same day, at the borough and city of Lichfield aforesaid, in the county aforesaid, publish a list of the names of the persons elected at the said election, in which list the name of him the said W. G. was inserted as a councillor of the said borough and city for the said South Ward; and the said W. G. further saith, that he the said W. G. being so elected such councillor to supply the said extraordinary vacancy as aforesaid, did afterwards, and before he the said W. G. in any way acted as such councillor (except as in the said act is in that behalf excepted and permitted,) to wit, on the day and year last aforesaid, at the borough and city of Lichfield aforesaid, in the county aforesaid, before two of the council of the said borough and city, duly make and subscribe the declaration in that behalf prescribed and required in and by the said act, according to the provisions of the said act, and he the said W. G. then and there accepted and took upon himself the said office, and became and was and still is a councillor of the said borough and city of Lichfield; by virtue whereof he the said W. G., for all the time in the said information in that behalf mentioned, hath used and exercised and still doth use and exercise the office of a councillor of the said borough and city, and hath there claimed and still doth there claim to be a councillor of the said borough and city, and to have, use and enjoy all the liberties, privileges, and franchises to the office of a councillor of the said borough and city belonging and appertaining, as it was lawful for him to do. Without this, that he the said W. G. hath [357] usurped the said office, \*liberties,\* privileges, and franchises, or any part thereof, upon our said Lady the Queen, in manner and form

fill the ordinary and which the extraordinary vacancy. The plea shows that the voting papers specified every thing required by sect. 32 of the Municipal Corporations Act, which the defendant contended was sufficient, notwithstanding the decision in *Reg. v. Rowley*, 20 Law J., Q. B., 198. The plea is unusually precise as to the contents of the voting papers, in order to raise upon the record the real point in dispute.

as in the said information is above supposed, and this he the said W. G. is ready to verify, &c.; wherefore he prays judgment, and that the said office, liberties, privileges, and franchises in form aforesaid claimed by him, may for the future be allowed to him, and that he may be dismissed and discharged by the court here of and from the premises aforesaid.

(Signed) W. R. COLLE.

Replication to the above Plea.

AND Charles Francis Robinson, Esq., now (a) coroner and attorney of our said Lady the Queen in the court of our said Lady the Queen before the Queen herself, who for our said Lady the Queen in this behalf now (a) prosecuteth, having heard the aforesaid plea of the said W. G., in manner and form aforesaid pleaded in bar, for our said Lady the Queen says, that our said Lady the Queen, for anything by him the said W. G. above in that plea alleged, ought not to be precluded from having her aforesaid information against him the said W. G. because the said coroner and attorney of our said Lady the Queen says, that the said burgesses did not elect and choose him the said W. G. to be a councillor of the said borough and city, to supply the said extraordinary vacancy, in manner and form as the said W. G. has in his said plea in that behalf alleged; and this the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen, prays may be inquired of by the country. And the said W. G. doth the like. And the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen, further says, that a majority of the said burgesses entitled to vote at the said election, did not deliver their respective voting papers to the said T. A. and W. V. in manner and form as the said W. G. has in his said plea in that behalf alleged; and this the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen, prays may be inquired of by the country. And the said W. G. doth the like. And the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen, further says, that the said T. A. and W. V. did [\*358] not ascertain and declare the said W. G. to be elected a councillor of the said borough and city, in order to supply the said extraordinary vacancy in manner and form as the said W. G. has in his said plea in that behalf alleged: and this the said coroner and attorney of our said Lady the Queen, prays may be inquired of by the country. And the said W. G. doth the like, &c.

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No. 32.

Plea by a Burgess, shewing his Qualification, &c.

Of — Term, in the — year of Queen Victoria.

J. S. } AND now, that is to say, on —, the — day of —, in this  
 a.s. } same term before our Lady the Queen at Westminster, cometh  
 The Queen. } the aforesaid J. S., by — his clerk in court, and, having

(a) The information was exhibited by Peregrine Dealtry, Esq., the then Master of the Crown Office, who died, and was succeeded in his office by Charles Francis Robinson, Esq., before this replication was filed.

heard the said information read, complains that he is by colour thereof greatly troubled and vexed, and that unjustly ; because, protesting that the said information and the matter therein contained, are not sufficient in law, and that he the said J. S. is not bound by the law of the land to answer the same, yet, for plea in this behalf the said J. S. saith, that true it is that (a) the borough of Liverpool is an ancient borough, and that the mayor, aldermen and burgesses of the said borough have been and are one body corporate and politic in deed, fact, and name, by the name of The Mayor, Aldermen and Burgesses of the Borough of Liverpool, during the time in the said information in that behalf mentioned, that is to say, at the borough of Liverpool aforesaid, in the county aforesaid ; and that within the said borough, pursuant to the provisions of the said act of Parliament in the said information mentioned, there of right ought to be an indefinite number of burgesses of the said borough duly qualified and inrolled as in the said act specified ; and that the place and office of a burgess of the said borough is a public office and franchise, and a place and office of great trust and pre-eminence within the said borough, touching the rule and government of the said borough, and the election of councillors, auditors, and assessors for the said borough, that is [359] \*to say, at the borough of Liverpool aforesaid, in the county aforesaid, as in the said information is above suggested ; but the said J. S. further saith, that after the passing of the said act of Parliament, to wit, on the 1st day of November, in the year of our Lord 1835, at the borough of Liverpool aforesaid, in the county aforesaid, the said borough of Liverpool, for the purposes of the said act, was, and from thenceforth hath been and still is, a borough duly divided into sixteen wards, under the provisions of the said act, the extent, limits, and boundary lines of the said wards having been, in due time in that behalf, to wit within the space of six weeks next after the passing of the said act, to wit, on the 12th day of October, in the year last aforesaid, at the borough aforesaid, in the county aforesaid, duly determined and set out, and copies of the particulars of the said division having been, to wit, then and there duly transmitted, published, and delivered, according to the provisions of the said act ; and the said J. S. further saith, that one of the said wards, into which the said borough was so divided as aforesaid, then and there was, and still is, called and known as the Everton and Kirkdale Ward ; and the said J. S. further saith, that he the said J. S., being a male person, on the last day of August, in the year of our Lord 1841, at the borough of Liverpool aforesaid, in the county aforesaid, was of full age, and that he had then occupied a certain house, [warehouse, counting-house, or shop, *as the case may be*], within the said borough of Liverpool, and within the township of Everton, being a township maintaining its own poor, and in the said Everton and Kirkdale Ward, during that year, and the whole of each of the two preceding years, and also during the time of such occupation had been an inhabitant householder within [seven miles of] the said borough, to wit, in the borough of Liverpool aforesaid, in county aforesaid ; and that he the said J. S. had been rated in respect of the said premises so occupied by him within the said borough of Liverpool, to all rates made for the relief of the poor of the said township of Everton, being a township maintaining its own poor, in which township the said house, [warehouse, counting-house, or shop, *as the case*

(e) Here follow the language of the information.

*may be*], so occupied by him as aforesaid, was situate, during the time of his occupation as aforesaid; and that he had paid, before the last day of August, in the said year 1841, to wit, on the 1st day of January, in the year of our Lord 1839, and on divers other days between that day and the said last day of August 1841 aforesaid, to wit, at the borough of Liverpool aforesaid, in the county aforesaid, all such rates, and also all borough-rates directed to be paid under the provisions of the said act, which had become \*payable by him in respect of the said premises occupied by him as aforesaid, except such as had become payable within six calendar months next before the said last day of August, in the year last aforesaid; and that he was not then an alien, nor had he, at any time within twelve calendar months next before the said last day of August in the year last aforesaid, or at any other time, received parochial relief, or other alms, or any pension or charitable allowance from any fund entrusted to the charitable trustees of the said borough, or of any borough; and the said J. S. further saith, that afterwards, to wit, on the 5th day of September, in the year last aforesaid, the overseers of the poor of the said township of Everton, did make out the burgess-list in due form of law in that behalf, of all persons entitled to be enrolled in the burgess-roll of that year, in respect of property within the said township of Everton, to wit, at the borough of Liverpool aforesaid, in the county aforesaid; and that the said overseers did then and there insert the name of him the said J. S. in the said burgess-list, for the said J. S. being then and there entitled to be on the burgess-list, and to be on burgess-roll of the said borough; and that the said overseers did then and there sign the said burgess-list, and did then and there deliver the same to the town-clerk of the said borough; and that afterwards, to wit, on the 3rd day of October, in the year last aforesaid, in the borough of Liverpool aforesaid, in the county aforesaid, A. B., Esq., then and there being and acting as the mayor of the said borough of Liverpool, and C. D. and E. F., gentlemen, then and there being and acting as the two assessors of the said borough of Liverpool, theretofore duly chosen in that behalf as assessors to hold the court for revising the burgess-lists of the said borough with the said mayor, did duly hold an open court within the said borough, for the purpose of revising the said burgess-lists according to the provisions of the said act, and did then and there revise and settle the said lists according to the provisions of the said act, and did then and there adjudge that the said J. S. was then and there entitled to be on the aforesaid burgess-list so made out, signed, and delivered as hereinbefore mentioned, and that the name of him the said J. S. should be retained on the said burgess-list, and did not expunge the same; and the said mayor did then and there sign his name to every page of the said burgess-lists so revised and settled as aforesaid, and then and there delivered the same to the town-clerk of the said borough, who then and there made out the burgess-roll and ward-lists of the said borough, according to the provisions of the said act; and that the name of him the said J. S. \*was then and there duly inserted in the said burgess-roll and in the ward-list for the said ward, called and known [\*361] as the Everton and Kirkdale Ward, according to the provisions of the said act; by means of which said premises, he the said J. S. became and was, and still is, a burgess of the said borough of Liverpool, to wit, for the said Everton and Kirkdale Ward; by virtue whereof he the said J. S., for all

the time in the said information in that behalf mentioned, hath used and exercised, and still doth use and exercise, the office of a burgess of the said borough for the said Everton and Kirkdale Ward, and hath there claimed, and still doth there claim, to be a burgess of the said borough for the said ward, and to have, use and enjoy all the liberties, privileges, and franchises to the office of a burgess of the said borough for the said ward belonging and appertaining, as it was lawful for him to do. Without this, that he the said J. S. hath usurped the said office, liberties, privileges, and franchises, or any part thereof, upon our said Lady the Queen, in manner and form as in the said information is above supposed; and this he the said J. S. is ready to verify, &c.; wherefore he prays judgment, and that the said office, liberties, privileges, and franchises, in form aforesaid claimed by him, may for the future be allowed to him; and that he may be dismissed and discharged by the court here of and from the premises aforesaid.

(Signed) W. R. COLE.

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No. 33.

Demurrer to a Plea (General or Special)—Joinder—Cur. adv. vult.—Judgment for the Crown.

Of — Term, in the — year of Queen Victoria.

The Queen } AND the said coroner and attorney of our said Lady the Queen,  
against } who for our said Lady the Queen in this behalf prosecuteth,  
J. S. } having heard the said plea of the said J. S. by him in manner  
and form aforesaid above pleaded in bar, for our said Lady the Queen saith,  
That the said plea and the matters therein contained, in manner and form  
as the same are above pleaded and set forth, are not sufficient in law, and  
that he the said coroner and attorney, who for our said Lady the Queen in  
this behalf prosecuteth, is not bound by the law of the land to answer the  
[\*362] same; and this he the said coroner and attorney is ready to verify:  
wherefore, for want of a sufficient plea in this behalf, the said cor-  
oner and attorney of our said Lady the Queen, for our said Lady the Queen  
prayeth judgment, and that the said J. S. may be convicted of the premises  
above charged upon him, and may be forejudged and excluded of and from  
the office, liberties, privileges, and franchises aforesaid. [If the demurrer  
be special proceed thus: "And the said coroner and attorney, according to  
the form of the statutes in such case made and provided, sets down and  
shows to the court here the following causes of demurrer to the said plea,  
(that is to say) for that," &c.].

*Joinder in Demurrer.*—And the said J. S. saith, that his said plea by  
him above pleaded, and the matters therein contained, in manner and form  
as the same are above pleaded and set forth, are sufficient in law; and he  
the said J. S. is ready to verify and prove the same as the court shall award.  
Wherefore, inasmuch as the said coroner and attorney of our said Lady the  
Queen, for our said Lady the Queen, hath not hitherto answered or denied  
the said plea, nor in any manner replied to the same, he the said J. S. prays



judgment, and that the said office, liberties, privileges, and franchises, so claimed by him as aforesaid, may be allowed and adjudged to him, and that he may be dismissed and discharged by the court of and from the premises by the said information above charged upon him.

*Cur. adv. vult.*.]—And because the court of our said Lady the Queen now here is not yet advised about giving their judgment of and concerning the premises aforesaid, a day is therefore given as well to the said C. F. R., who for our said Lady the Queen in this behalf prosecuteth, as to the said J. S., until on [Monday, &c.], before our said Lady the Queen, wheresoever she shall then be in England, to hear their judgment thereupon, for that the said court of our said Lady the Queen now here is not yet advised thereupon.

*Judgment.*.]—At which time, to wit, on [Monday, &c.], before our said Lady the Queen at Westminster, come as well the said C. F. R., who for our said Lady the Queen in this behalf prosecuteth in his proper person, as the said J. S. by his clerk in court aforesaid. Whereupon all and singular the premises being seen and fully understood by the court of our said Lady the Queen now here, upon mature deliberation thereupon had, It is considered and adjudged by the said court here that the said plea of the said J. S., and the matters therein contained, in manner and [\*363] form as the same are above pleaded and set forth, are not sufficient in law: It is thereupon considered and adjudged that the said J. S. do not in any manner intermeddle with or concern himself in or about the office, liberties, privileges, and franchises aforesaid, but that he be absolutely forejudged and excluded from ever exercising or using the same or any of them for the future; and that the said J. S., in order to satisfy our said present Sovereign Lady the Queen for and on account of the usurpation aforesaid be taken, and so forth; and that the said E. F., the relator above mentioned in this behalf, do recover against the said J. S. the sum of ——— for his costs by him laid out and expended in carrying on his suit in this behalf, according to the form of the statute in such case made and provided.

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#### No. 34.

Judgment for Defendant upon Demurrer to his Plea, &c.

*Cur. ad vult., &c.. as ante, No. 33.*—At which day, to wit, on [Monday, &c.], before our said Lady the Queen at Westminster, come as well the said C. F. R., who for our said Lady the Queen in this behalf prosecuteth in his proper person, as the said J. S. by his clerk in court aforesaid. Whereupon all and singular the premises being seen and fully understood by the court of our said Lady the Queen now here, upon mature deliberation thereupon had, It is considered and adjudged by the said court here that the said plea of the said J. S., and the matters therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law: It is thereupon considered that the said office, liberties, privileges,

and franchises so claimed by him the said J. S. as aforesaid be allowed and adjudged to him, and that he the said J. S. be dismissed and discharged by the said court here of and from the premises above charged upon him ; and that he the said J. S. do depart hence without day in this behalf ; and also that he the said J. S. recover against the said E. F., the relator above named in this behalf, the sum of — for his costs by him laid out and expended in defending his suit in this behalf, according to the form of the statute in such case made and provided.

[\*364]

\*No. 35.

Replication traversing certain Allegations in a Plea, and also alleging new Matter.

Of — Term, in the — year of Queen Victoria.

The Queen } AND the said coronor and attorney of our said Lady the Queen,  
against } who for our said Lady the Queen in this behalf prosecuteth,  
J. S. } having heard the plea of the said J. S. by him in manner and  
form aforesaid above pleaded in bar, for our said Lady the Queen saith, that our said Lady the Queen, by reason of anything by the said J. S. above in his plea alleged, ought not to be barred from having her aforesaid information against him the said J. S. ; because, protesting that the said plea and the matters therein contained in manner and form as the same are above pleaded and set forth are not sufficient in law, nevertheless for replication thereto the said coronor and attorney of our said Lady the Queen, for our said Lady the Queen, saith [*here traverse some material allegation contained in the plea, ex. gr.*, "That he the said J. S., at the time of the said election in the said plea mentioned, was not duly qualified according to the provisions of the said act to be elected and to be a councillor of the said borough and city under and by virtue of the said act"] in manner and form as the said J. S. hath in his said plea in that behalf alleged ; and this he said coronor and attorney of our said Lady the Queen, for our said Lady the Queen, prays may be inquired of by the country, &c. [And the said J. S. doth the like.] And the said coronor and attorney of our said Lady the Queen, for our said Lady the Queen, further saith, [*here traverse some other material allegation in the plea, ex. gr.*, "That the burgesses of the said South Ward, duly enrolled as the said act requires, did not elect and choose him, the said J. S., to be a councillor of the said borough and city, according to the provisions of the said act,"] in manner and form as the said J. S. hath in his said plea in that behalf alleged ; and this the said coronor and attorney of our said Lady the Queen, for our said Lady the Queen, prays may be inquired of by the country, &c. [And the said J. S. doth the like.] And the said coronor and attorney of our said Lady the Queen, for our said Lady the Queen further saith, that, [*here allege any new matter by way of confession and avoidance not inconsistent with the matter pleaded by the defendant, and conclude thus :*] And this the said coronor and attorney of our said Lady the Queen, for our said Lady the Queen, is ready to verify ; wherefore he prays judgment, and that the

said J. S. may be convicted of the \*premises above charged upon him, and may be forejudged and excluded of and from the office, [\*365] liberties, privileges, and franchises aforesaid.

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No. 36.

Replication to several Pleas, traversing several of the Allegations contained in each.

Of — Term, in the — year of Queen Victoria.

The Queen  
against  
J. S. } AND the said coroner and attorney of our said Lady the Queen,  
who for our said Lady the Queen in this behalf prosecuteth, hav-  
ing heard the said pleas of the said J. S. by him in manner and  
form above pleaded in bar, for our said Lady the Queen saith, that by reason  
of any thing by the said J. S. in his said first plea above alleged, our said  
Lady the Queen ought not to be barred from having her aforesaid informa-  
tion against the said J. S.; because, protesting that the said first plea and  
the matters therein contained, in manner and form as the same are above  
pleaded and set forth, are not sufficient in law; nevertheless for replication  
thereto, the said coroner and attorney of our Lady the Queen, for our said  
Lady the Queen, saith, that [*here traverse some material allegation con-  
tained in the first plea,*] in manner and form as the said J. S. hath in his  
said first plea above alleged; and this he the said coroner and attorney of  
our said Lady the Queen, for our said Lady the Queen, prays may be in-  
quired of by the country, &c. [And the said J. S. doth the like.] And the  
said coroner and attorney of our said Lady the Queen for our said Lady the  
Queen, further saith, that by reason of any thing by the said J. S. in his  
said first plea above alleged, our said Lady the Queen ought not to be bar-  
red from having her aforesaid information against the said J. S., because he  
saith, that [*here traverse some other material allegation in the plea, modo  
et formâ, &c. as above.*] And as to the plea of the said J. S. by him  
[secondly, thirdly, or lastly, *as the case may be*] above pleaded, the said  
coroner and attorney of our said Lady the Queen, for our said Lady the  
Queen, saith, that, by reason of any thing by the said J. S. in his said [last]  
plea above alleged, our said Lady the Queen ought not to be barred from  
having her aforesaid information against the said J. S.; because, protesting  
that the said [last] plea, and the matters therein contained, in manner and  
form as the same are above pleaded and set forth, are not sufficient in law;  
nevertheless for replication thereto the said coroner and attorney of our said  
Lady the Queen, for our said Lady the Queen, \*saith, that [*here* [\*366]  
*traverse some material allegation in the plea,*] in manner and form  
as the said J. S. hath in his said [last] plea above alleged; and this he the  
said coroner and attorney of our said Lady the Queen, for our said Lady the  
Queen, prays may be inquired of by the country, &c. [And the said J. S.  
doth the like.] And the said coroner and attorney of our said Lady the  
Queen, for our said Lady the Queen, further saith, that by reason of any  
thing by the said J. S. in his said [last] plea above alleged, our said Lady  
the Queen ought not to be barred from having her aforesaid information

against the said J. S., because he saith that [*here traverse some other material allegation in the plea, modo et formá, &c. as above.*](a)

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No. 37.

Demurrer to Replication and Joinder.

Of — Term, in the — year of Queen Victoria.

J. S.  
ata.  
The Queen.

AND the said J. S., as to the said replication of the said coroner and attorney to the said plea of him the said J. S., saith, that the said replication, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law, and that he need not nor is he obliged by the law of the land to answer the same; and this he is ready to verify. Wherefore and for want of a sufficient replication in this behalf, the said J. S. prayeth judgment; and that the said office, liberties, privileges, and franchises so claimed by him as aforesaid, may be allowed and adjudged to him, and that he may be dismissed and discharged by the court here of and from the premises above charged upon him in form aforesaid. [*If the demurrer be special proceed thus:—*“And the said J. S., according to the form of the statutes in such case made and provided, sets down and shews to the court here the following causes of demurrer to the said replication, (that is to say) for that” &c.]

*Joinder in Demurrer.*—And the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen, saith, that the said replication of him the said coroner and attorney, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law; and he is ready to verify and prove the same as the court [\*367] shall award; wherefore inasmuch as the \*said J. S. hath not answered or denied the said replication, nor in any manner rejoined to the same, the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen, prayeth judgment, and that the said J. S. may be convicted of the premises above charged upon him, and may be forejudged and excluded of and from the office, liberties, privileges and franchises aforesaid.

*Cur. ad vult. and Judgment, &c., as ante, 389, except that instead of saying, “that the said information and the matters therein contained are sufficient in law,” say, “that the said replication of the coroner and attorney of our said Lady the Queen, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law.”*

(a) See the replication to plea No. 31, ante, p. 357.

## No. 38.

Summons to set aside Replications for Irregularity, or to strike out some of them, as being contrary to the Rule of H. T. 7 & 8 Geo. 4, (ante, 218.)

The Queen } LET the solicitor or agent for the prosecution attend me at my  
V. } chambers in Rolls Gardens to-morrow, at 11 of the clock in the  
Rowley. } forenoon, to shew cause why the replications to the defendant's  
plea should not be set aside for irregularity, on the ground of the same being  
contrary to the rule of Hilary Term, 7 & 8 Geo. 4, and why the defendant  
should not be at liberty to sign judgment as for want of a replication; or  
why all the said replications, except the *fourth* (or such other as to me shall  
seem fit,) should not be struck out with costs, to be taxed by the Master of  
the Crown Office, and paid to the defendant or his solicitor by W. Smith,  
the relator in the information named.

Dated the 6th day of July, 1842.

J. WILLIAMS.

## No. 39.

Order made on the above Application.

The Queen } UPON hearing Mr. Cowling and Mr. Cole, of counsel on both  
V. } sides, I do order that the first and second replications to the  
Rowley. } defendant's plea be struck out for irregularity, and that the 3rd,  
4th, and 5th replications do stand; and that the relator do pay the costs of  
this application, to be taxed.

Dated the 7th day of July, 1842.

W. WIGHTMAN.

## \*No. 40.

[\*368]

Rejoinder to some of the Replications, and Demurrer to others.(a)

Of — Term, in the — year of Queen Victoria.

J. S. } AND the said J. S., as to the said plea of the said coroner and  
als. } attorney of our said Lady the Queen by him in form aforesaid  
The Queen. } [thirdly] above pleaded in reply, protesting that the said plea and the mat-  
[thirdly] above pleaded in reply, protesting that the said plea and the mat-  
ters therein contained are not sufficient in law, [protesting also [*any facts*  
*not disputed*] as the said coroner and attorney of our said Lady the Queen,  
for our said Lady the Queen, hath in his said plea [thirdly] above pleaded  
in reply in that behalf alleged ;] Yet for plea by way of rejoinder in this  
behalf, the said J. S. says, that he was elected an alderman of said borough  
in manner and form as the said J. S. hath above in his said plea in that  
behalf alleged : Without this, that the said J. S., on, &c., [*here traverse*

(a) This precedent supposes that *issues* have been joined by the other replications not mentioned.

*some material part of the replication,*] in manner and form as the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen, hath in his said plea [thirdly] above pleaded in reply in that behalf alleged; and this he the said J. S. is ready to verify: wherefore he prays judgment, and that the said office, liberties, privileges, and franchises, so claimed by him as aforesaid, may be allowed and adjudged to him; and that he may be dismissed and discharged by the court here of and from the premises above charged upon him in form aforesaid. And the said J. S., as to the said plea of the said coroner and attorney of our said Lady the Queen by him in form aforesaid [fifthly] above pleaded in reply, says that [the said J. S. did not resign the office of an alderman of the said borough,] in manner and form as the said coroner and attorney of our said Lady the Queen hath in the same plea alleged; and of this the said J. S. puts himself upon the country, &c. [And the said attorney of our said Lady the Queen, for our said Lady the Queen, doth the like.] And the said J. S., as to the said plea of the said coroner and attorney of our said Lady the Queen by him in form aforesaid [sixthly] above pleaded in reply, says, that the said plea and the matters therein contained in manner and form as the same are above [\*360] pleaded and set forth are not sufficient in law, and that he need not nor is he obliged by the law of the land to answer thereto by way of rejoinder; and this he is ready to verify: Wherefore and for want of a sufficient replication in this behalf, the said J. S. prays judgment, and that the said office, liberties, privileges, and franchises so claimed by him as aforesaid, may be allowed and adjudged to him; and that he may be dismissed and discharged by the court here of and from the premises above charged upon him in form aforesaid. [*If the demurrer be special proceed thus:*—“And the said J. S., according to the form of the statutes in such case made and provided, sets down and shews to the court here the following causes of demurrer to the said plea so [sixthly] above pleaded in reply as aforesaid, (that is to say) for that,” &c.

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#### No. 41.

##### Surrender and Joinder in Demurrer.

Of — Term, in the — year of Queen Victoria.

<p>The Queen against J. S.</p>	}	<p>AND the said coroner and attorney of our said Lady the Queen, who for our said Lady the Queen in this behalf prosecuteth, as to the said plea of the said J. S. above pleaded by way of rejoinder to the said plea of him the said coroner and attorney [thirdly] above pleaded in reply, for our said Lady the Queen saith, as before, that [<i>repeat the allegation traversed,</i>] in manner and form as the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen hath in his said plea [thirdly] above pleaded reply in that behalf alleged; and this the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen, prays may be inquired of by the country. [And the said J. S. doth the like.] And the said coroner and attorney of our</p>
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said Lady the Queen, as to the said demurrer of the said J. S., to the said plea of him the said coroner and attorney [sixthly] above pleaded in reply, for our said Lady the Queen saith, that the said plea [sixthly] above pleaded in reply, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law, and he is ready to verify and prove the same as the court shall award: Wherefore, inasmuch as the said J. S. hath not answered the said plea, nor in any manner rejoined to the same, the said coroner and attorney of our \*said Lady the Queen, for our said Lady the Queen, prays judgment, and that the said J. S. may be convicted of the premises above [\*370] charged upon him, and may be forejudged and excluded of and from the office, liberties, privileges, and franchises aforesaid.

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No. 42.

Retraxit by the Queen's Coroner and Attorney of his Replication, Surrejoinder, &c.; and Confession of Defendant's Special Plea, with Judgment thereon.

AT which time, to wit, on —, in this same term, before our said Lady the Queen at Westminster, come as well the said Charles Francis Robinson, who for our said Lady the Queen in this behalf prosecuteth, in his proper person, as the said J. S. by his clerk in court aforesaid: and as to the said several issues so above joined as aforesaid, he the said C. F. R. having reviewed, re-inspected, and re-examined the said plea of him the said J. S., so by him above pleaded as aforesaid, and also the said replication of him the said coroner and attorney to the said plea, and also the said rejoinder of him the said J. S. to the said replication, and also the said surrejoinder of him the said coroner and attorney to the said rejoinder, inasmuch as no evidence is laid before him the said coroner and attorney, on behalf of our said present Sovereign Lady the Queen, in order to falsify or disprove the several matters upon which the said several issues are so above joined as aforesaid, or any of them, he the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen saith, that he cannot deny the truth of the said several matters so put in issue as aforesaid, or any of them, but doth now, for our said Lady the Queen, confess the said plea, and also the said rejoinder, and also all and singular the matters and things therein mentioned and contained, and doth expressly acknowledge the same to be in all respects true: Whereupon [judgment in the same form as after verdict for defendant, post, No. 59, p. 386.]

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No. 43.

Retraxit of Plea and Disclaimer, with Judgment of Ouster, &c.

AND hereupon afterwards, to wit, on Friday, the — day of —, in this same term, before our said Lady the Queen \*at Westminster, come as well to the said Charles Francis Robinson, who for our [\*371]

said Lady the Queen prosecuteth in this behalf, in his proper person, as the said J. S. by his clerk in court aforesaid, and the said J. S. having withdrawn his said plea, [or several pleas,] by him above pleaded in manner and form aforesaid, saith that he doth altogether disavow and disclaim the office, liberties, privileges, and franchises in the said information specified, and cannot deny but that he hath usurped upon our said Lady the Queen the said office, liberties, privileges, and franchises, during all the time in the said information mentioned, and confesseth and acknowledgeth the said usurpation, in manner and form as in the said information is above alleged against him; and hereupon he putteth himself upon the mercy of our said Lady the Queen: Whereupon [*judgment as ante*, No. 23, p. 337.]

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No. 44.

Issue where the Information was filed in the same Term.

PLEAS before our Lady the Queen at Westminster, of [Hilary] Term, in the 22 year of the reign of our Sovereign Lady Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

Amongst the pleas of the Queen, — Roll.

Cambridgeshire,

Amongst the Informations of this Term, No. —.

Be it remembered, That Charles Francis Robinson, Esquire, coroner and attorney of our present Sovereign Lady the Queen, who for our said Lady the Queen in this behalf prosecuteth, in his proper person cometh here into the court of our said Lady the Queen, before the Queen herself at Westminster, on [Friday the 11th day of January] in this same term, and for our said Lady the Queen, at the relation of E. F., of —, surgeon, according to the form of the statute in such case made and provided, brings into the court of our said Lady the Queen before the Queen herself now here, a certain information, in nature of a quo warranto, against J. S., late of — [gentleman,] which said information followeth in these words, (that is to say:) Cambridgeshire.—Be it remembered, that [*here copy the information verbatim to the end, and then go on to award process thus:*] Wherefore the Sheriff of the said \*county of Cambridge [372] is commanded, that he do not forbear by reason of any liberty in his bailiwick, but that he cause him to come, to answer to our said Lady the Queen touching and concerning the premises aforesaid.

And now, (that is to say), on the same [Friday, the 11th day of January in this same term, before our said Lady the Queen, at Westminster, cometh the said J. S., by — his clerk in court, and having heard the said information read, he says [or complains, &c., *copy the plea or pleas verbatim to the end, then the replication and subsequent pleadings verbatim, beginning each with a fresh line. Conclude thus:*]

Therefore, for the trying of the said several issues above joined, let a jury thereupon come before our said lady the Queen, on —, whereso-



ever she shall then be in England, by whom the truth of the matter may be better known, and who are not of the kindred of the said J. S., to try upon their oath the said several issues so above joined as aforesaid, as well the said C. F. R. who for our said Lady the Queen in this behalf prosecuteth, as the said J. S., have thereupon put themselves upon the same jury, the same day is given as well to the said C. F. R., who for our said Lady the Queen in this behalf prosecuteth, as to the said J. S.

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No. 45.

Issue where the Information was filed in a previous term.

PLEAS before our Lady the Queen at Westminster, of [Hilary] Term, in the — year of the reign of our Sovereign Lady Victoria by the grace of God of the United kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

Amongst the pleas of the Queen, — Roll.

*Cheshire.* } Be it remembered, That Charles Francis Robinson, Esq.,  
 Amongst the } coroner and attorney of our present Sovereign Lady the Queen  
 Informations } who, for our said Lady the Queen, in this behalf prosecuteth,  
 of last Term, } in his proper person came here into the court of our said  
 No. — } Lady the Queen before the Queen herself, at Westminster, on  
 [Tuesday the 2nd of November, in Michaelmas] term last past and for our  
 said lady the Queen at the relation of E. F., of —, [surgeon], accord-  
 ing to the form of the statute in such case made and provided, brought into  
 the court of our said Lady the Queen \*before the Queen herself [\*373]  
 then there, a certain information, in the nature of a quo Warranto, against J. S. late of —, [gentleman], which said information followeth in  
 these words, (that is to say:) *Cheshire.* Be it remembered, [*here copy the in-*  
*formation verbatim to the end, and then go on to state the award of process*  
*thus:*] Wherefore the sheriff of the said county of *Chester* was com-  
 manded that he should not forbear, by reason of any liberty in his bailiwick  
 but that he should cause him to come, to answer to our said lady the Queen  
 touching and concerning the premises aforesaid.

And now, (that is to say, on [Friday the 11th of January] in this same  
 term before our said Lady the Queen at Westminster, cometh the said J.  
 S., by — his clerk in court, and having heard the said information read,  
 he says [*or complains, &c.; copy the plea or pleas verbatim to the end, then*  
*the replication and subsequent pleadings verbatim, beginning each with a*  
*new line. Conclude thus:*]

Therefore, for the trying of the said several issues above joined, let a jury  
 thereupon come before our said Lady the Queen, on —, wheresoever she  
 shall then be in England, by whom the truth of the matter may be the bet-  
 ter known, and who are not of the kindred of the said J. S., to try upon  
 their oath the said several issues so above joined as aforesaid, because as  
 well the said C. F. R., who for our said Lady the Queen in this behalf  
 prosecuteth, as the said J. S. have thereupon put themselves upon the

same jury, the same day is given as well to the said C. F. R., who for our said Lady the Queen in this behalf prosecuteth, as to the said J. S.

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No. 46.

Record of Nisi Prius.

*Copy the issue verbatim, as ante, Nos. 44 and 45, then go on thus:—*  
 2 "At which time, to wit, on(a) —, before our said Lady the Queen at Westminster, came as well the said C. F. R., who for our said Lady the Queen in this behalf prosecuteth, as the said J. S., by his clerk in court aforesaid; and the sheriff of the said county of — hath returned the names of twelve jurors, none of whom come to try in form aforesaid; [\*374] Therefore the sheriff of the said county of — is commanded that he do not forbear by reason of any liberty in his bailiwick, but that he distrain the bodies of the jurors aforesaid by all their lands and chattels in his bailiwick, so that neither they nor any one for them do put their hands to the same, until he shall have another command from our said Lady the Queen for that purpose; and that he answer to our said Lady the Queen for the issues thereof, so that he may have their bodies before our said Lady the Queen on (b) —, ~~wheresoever she shall then be in~~ England, or before the justices of our said Lady the Queen assigned to hold the assizes in and for the said county of —, if they shall come before that time, (that is to say) on(c) [Monday], the — day of —, at —, in the said county, according to the form of the statute in such case made and provided, to try upon their oath the said several issues so above joined as aforesaid, in default of the jury aforesaid who came not to try in form aforesaid; therefore let the sheriff of the said county of — have the bodies of the jurors aforesaid accordingly to try in form aforesaid; the same day is given as well to the said C. F. R., who for our said Lady the Queen in this behalf prosecuteth, as to the said J. S.

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No. 47.

Venire.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of — greeting. We command you, that [you do not forbear by reason of any liberty in your bailiwick, but that(d)] you cause to come before us, on(e) —,

- (a) The return day of the venire.
- (b) The return day of the distringas; usually the first day of the term next after the trial.
- (c) The commission day at the assizes.
- (d) The non-omittas clause should not be inserted when the writ is directed to the sheriffs of London, or any other city.
- (e) Any day in term time before the trial; usually the last day of the preceding term.

wheresoever we shall then be in England, twelve good and lawful men of the body of your county qualified according to law, by whom the truth of the matter may be better known, and who are not of the kindred of J. S., late of —, \*gentleman, to try upon their oath whether the said J. S. be guilty of certain usurpations and misdemeanors whereof he [\*375] is impeached or not; because as well Charles Francis Robinson, Esq., our coroner and attorney in our court before us, who for us in this behalf prosecuteth, as the said J. S., have thereupon severally put themselves upon the said jury; and have you then there the names of the said jurors and this writ. Witness, Thomas Lord Denman, at Westminster, the(a) — day of —, in the — year of our reign.

By the court,  
ROBINSON.

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No. 48.

Distringas (Common or Special Jury.)

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of —, greeting. We command you, that [you do not forbear by reason of any liberty in your bailiwick, but that(b)] you distrain the bodies of the several persons named in the panel annexed to this writ [or, *if the jury be special, say*, "that you distrain A. B., of &c., Esq., C. D., of &c., merchant," *inserting the names and descriptions of the twenty-four special jurors according to the Master's list,*] being the jurors summoned in our court before us, between us and J. S., late of &c., by all their lands and chattels in your bailiwick, so that they, nor any one for them, do put their hands to the same, until you shall have another command from us for that purpose; and that you answer to us for the issues thereof, so that you may have their bodies before us on(c) —, wheresoever we shall then be in England, or before our justices assigned to hold the assizes in and for our county of —, if they shall come before that time (that is to say,) on(d) [Monday] the — day of — next, at —, in your county [*if the trial is to be had in London or Middlesex say*, "or before our right trusty and beloved Thomas Lord Denman, our Chief Justice, assigned \*to hold pleas in our court before us, if he shall come before that [\*376] time, (that is to say,) on(e) [Monday] the — day of — next, at the Guildhall of and within our city of London" or "at Westminster, in our county of Middlesex in the Great Hall of Pleas there,"] according to the form of the statute in such case made and provided, to try upon their oath whether the said J. S. be guilty of certain usurpations and misdemeanors whereof he is impeached or not; and to hear then the judgments for their many defaults:

(c) The date of defendant's plea.—There must be fifteen days exclusive between the teste and return of the writ. (1 Gude, 53.)

(b) See note (c) to form of Venire, p. 374.

(c) Some day in term time after the intended trial, usually the first day of the next term. There must be fifteen days between the teste and return of this writ. (1 Gude, 54.)

(d) The commission day at the assizes.

(e) The first day of the particular sittings.

and have you then there this writ. Witness, Thomas Lord Denman, at Westminster, the (a) — day of —, in the — year of our reign.

By the controlment of — term,  
— Roll:

By the court,  
ROBINSON.

*Indorsed.*—This writ is allowed, enrolled, and delivered of record before our Lady the Queen at Westminster, the term and roll within written.

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No. 49.

Attorney-General's Warrant of Nisi Prius.

*Lichfield.* } LET a record of nisi prius be made up between our Sovereign  
} Lady the Queen and J. S., late of &c., for certain usurpations and misdemeanors whereof he is impeached.

By the controlment of — term, in the  
— year of Queen Victoria, the  
— roll.

G. B. B., clerk in court for the  
prosecutor [" or defendant."]

F. POLLOCK.

[\*377]

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\*No. 50.

Attorney-General's Warrant for a Tales.

*Staffordshire.* } SIR Frederick Pollock, Knt., Attorney-General of our pre-  
} sent Sovereign Lady the Queen, for our said Lady the Queen prays a tales de circumstantibus, to be granted by the court here, according to the form of the statute in such case made and provided, for the trial of the issues [or issue] joined between our said Lady the Queen and J. S., late of —, for certain usurpations and misdemeanors whereof he is impeached, lest the jury to be taken in this behalf do remain untaken for default of jurors.

By the controlment of — term, in the  
— year of Queen Victoria, the —  
roll.

G. B. B., clerk in court for the  
prosecutor [or " defendant."]

F. POLLOCK.

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No. 51.

Subpoena ad testificandum.

VICTORIA, by the grace of God of the United Kingdom of Great Britain

(a) The return day of the venire.

and Ireland Queen, Defender of the Faith, to [*names of witnesses not exceeding four,*] and to every of them, greeting. We command you, and every of you, that, laying aside all excuses and pretences whatsoever, you and every of you personally be and appear before our justices assigned to hold the assizes in and for our county of —, on — the — day of —, at —, in our said county, there to testify the truth *on our behalf* against J. S., upon an information in nature of a quo warranto exhibited against him in our court before us, to show by what authority he claims to be mayor [*or “an alderman,” or “a councillor,”*] of the borough of —, whereof he is impeached; and so from day to day until the said information be tried. And this you or any of you are not to omit under the penalty of one hundred pounds, to be levied on the goods and chattels, lands and tenements of such of you as shall fail herein. Witness, Thomas \*Lord Denman, at Westminster, the — day of —, in the — year of [*\*378*] *our reign.*

By the Court,  
ROBINSON.

N. B.—*Where the subpoena is for the defendant, it must be “to testify the truth between us and J. S., upon an information in nature of a quo warranto exhibited against him in our court before us, to show by what authority he claims to be [mayor, &c.], whereof he is impeached, on behalf of the said J. S.; and so from day to day until the said information be tried; and this” [ &c., as above.]*

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No. 52.

*Subpœna duces tecum.*

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to A. B., greeting. We command you, that, laying aside all excuses and pretences whatsoever, you personally be and appear before our justices assigned to hold the assizes in and for our county of —, on — the — day of —, at —, in our said county, there to testify the truth on our behalf<sup>(a)</sup> against J. S., upon an information in nature of a quo warranto exhibited against him in our court before us, to show by what authority he claims to be mayor [*or “an alderman,” or “a councillor,”*] of the borough of —, whereof he is impeached, and so from day to day until the said information be tried; and that you do bring with you, and produce at the time and place aforesaid, [*here describe shortly the deed or documents required to be produced,*] in order that the same may be given in evidence on our behalf<sup>(a)</sup> against the said J. S., upon the trial of the said information, and this you are not to omit under the penalty of one hundred pounds, to be levied on your goods and chattels, lands and ten-

(a) If the subpoena be issued on behalf of the defendant, see *Note to 51 supra*. It may contain *four* names.

ments, if you shall fail herein. Witness, Thomas Lord Denman, at Westminster, the — day of —, in the — year of our reign.

By the court,  
ROBINSON.

[\*379]

\*No. 53.

Petition for a License to employ Queen's Counsel on behalf of the Defendant.

To the Queen's most excellent Majesty.

The humble petition of J. S. of —, Gent.

Sheweth,

THAT in last — term an information in nature of a quo warranto was granted by your Majesty's Court of Queen's Bench [*or "was exhibited by Sir Frederick Pollock, Knt., your Majesty's Attorney-General,"*] against your petitioner to show by what authority he claims to be mayor [*or an alderman, or a councillor, &c., as the case may be,*] of the borough of —, in the county of —; to which information your petitioner has appeared and pleaded, [*or say, "to which information your petitioner is required to appear and plead as of this present — term;"*] and your petitioner being desirous of having the assistance of F. T., Esq., one of your majesty's counsel learned in the law, [*or "Sir W. W. F., Knt., your Majesty's solicitor-general,"*] who may be very useful to your petitioner on the trial of the said information, and other proceedings relating thereto,

Your petitioner therefore humbly prays that your Majesty would be graciously pleased to grant your royal license and dispensation for the said F. T., Esq., [*or "Sir W. W. F., Knt.,"*] to be of counsel for your petitioner on the trial of the said information and other proceedings relating thereto; and your petitioner as in obedience and duty bound shall ever pray, &c.

No. 54.

License for Queen's Counsel to plead for a Defendant.

VICTORIA, R.

WHEREAS J. S., of, &c., gentleman, hath, by his petition, humbly represented unto us, that [*recite allegations in the petition*] the petitioner hath therefore humbly prayed us that [*recite prayer of the petition*]; We, being graciously pleased to condescend to his request, do accordingly, by these presents, dispense with the said F. T., Esq., and grant him our royal license to be of counsel for the petitioner in <sup>\*the</sup> said prosecution, [\*380] as often as there shall be occasion. Given at our court of St. James's, the — day of —, in the — year of our reign.

By her Majesty's command,

[Signature of Secretary of State.]

## No. 55.

**Postea with Verdict for the Crown upon some of the Issues, and for the Defendant on the others.**

**AFTERWARDS**, on the day and at the place last within contained, before the Hon. Sir A. B. B., Knt., one of the justices of our Lady the Queen assigned to hold pleas before the Queen herself, and the Hon. Sir C. D. Knt., one of the barons of the Exchequer of our said Lady the Queen, [*or* "one of the justices of our said Lady the Queen of the Bench,"] justices of our said Lady the Queen assigned to hold the assizes in and for the county of — within mentioned, according to the form of the statute in such case made and provided, come as well the within-named Charles Francis Robinson, Esq., who for our said Lady the Queen in this behalf prosecuteth in his proper person, as the within-named J. S. by his clerk in court within mentioned; and the jurors of the jury within mentioned being called,<sup>(a)</sup> and drawn out of the panel according to the form of the statute in such case made and provided, come and are sworn upon the said jury; whereupon public proclamation is made here in court for our said Lady the Queen, as the custom is, that if there be any one who will inform the aforesaid justices of assize, the Queen's serjeant-at-law, the Queen's attorney-general, or the jurors of the jury aforesaid, concerning the matters within contained, he should come forth and should be heard; and hereupon T. M., Esq., a counsel learned in the law, [*or* "T. J. P., Esq., one of the counsel of our said Lady the Queen learned in the law,"] offereth himself on behalf of our said Lady the Queen to do this; whereupon the court here proceedeth to the taking of the inquest aforesaid by the jurors aforesaid now here appearing for the purpose aforesaid, who being chosen, tried, and sworn to speak the truth touching and concerning the \*matters within contained, say upon their oath, as to the first issue within joined, that [\*381] [*here find the affirmative or negative of this issue, following the language of the replication, &c., ex. gr., that he the said J. S., at the time of the said election, in his said [first] plea within mentioned was [or was not] duly qualified, according to the provisions of the said act of Parliament within mentioned, to be elected and to be a councillor of the said borough and city, under and by virtue of the said act, in manner and form as the said J. S. hath in his said [first] plea in that behalf alleged; and as to the second issue within joined, the jurors aforesaid, upon their oath aforesaid, further say, that [here find the affirmative or negative of this issue modo et formá, &c., as above, ex. gr., that the burgesses of the said South Ward, duly enrolled as the said act requires, did [or did not] elect and choose him the said J. S. to be a councillor of the said borough and city, according to the provisions of the said act, in manner and form as the said J. S. hath in his said [first] plea in that behalf alleged; and as to the third issue within joined, the jurors aforesaid, upon their oath aforesaid, further say, that [here find*

(a) If the jury were special, see the next precedent.

*the affirmative or negative of this issue modo et forma, &c., as above; and so with respect to each subsequent issue.]*

### No. 56.

*Postea with Special Verdict on some of the Issues. (Special Jury.)*

**AFTERWARDS**, on the day and at the place last within contained, before the Right Hon. Thomas Lord Denman, chief justice assigned to hold pleas before the Queen herself, and the Hon. Sir C. D., Knight, one of the justices of our said Lady the Queen of the Bench [or "one of the Barons of the Exchequer of our said Lady the Queen,"] justices of our said Lady the Queen, assigned to hold the assizes in and for the county of —, within mentioned, according to the form of the statute in such case made and provided, come as well the within-named Charles Francis Robinson, Esq., who for our said Lady the Queen in this behalf prosecuteth, in his proper person, as the within-named J. S. by his clerk in court within mentioned, and the jurors of the jury within mentioned being called, (a) some of them, (to wit) A. B., of &c., merchant, [*here \*insert the names and descriptions of such special jurymen as appeared,*] come and are sworn upon the said jury, and because the rest of the jurors of the said jury do not appear, therefore others of the bystanders named and approved for that purpose by the sheriff of the said county of —, at the request of Sir Frederick Pollock, Knight, attorney-general of our said Lady the Queen, by the command of the said justices are newly appointed, whose names are added to the panel according to the form of the statute in such case made and provided, which said jurors so newly appointed, (to wit) O. P., of &c., grocer, [*names and descriptions of the talesmen*] being called, likewise come and are also sworn upon the said jury; whereupon public proclamation is made here in court for our said Lady the Queen, as the custom is, that if there be any one who will inform the aforesaid justices of assize, the Queen's serjeant-at-law, the Queen's attorney-general, or the jurors of the jury aforesaid, concerning the matters within contained, he should come forth and should be heard; and hereupon T. J. P., Esq., one of the counsel of our said Lady the Queen learned in the law, [or T. M., Esq., a counsel learned in the law,] offereth himself on behalf of our said Lady the Queen to do this, whereupon the court here proceedeth to the taking of the inquest aforesaid, as well by the jurors aforesaid first impanelled and sworn, as by the other jurors now here appearing, who together with the jurors aforesaid first impanelled and sworn, being chosen, tried, and sworn to speak the truth touching and concerning the matters within contained, say upon their oath as to the first issue within joined, that [*here find the affirmative or negative of this issue, following the language of the replication, &c.,*] in manner and form as the said J. S. hath in his said [first] plea in that behalf alleged; and as to the [second] issue within joined, the jurors aforesaid, upon their oath aforesaid, further say, that [*here find the affirmative or*

(a) If the jury were common, see the preceding precedent.



*negative of this issue modo et formâ, &c., as above;*] and as to the [third, fifth, and sixth] issues within joined, the jurors aforesaid, upon their oath aforesaid, say, that [*here find all the facts specially which relate to the particular issues. See 2 Gude's Prac. 304.*] But whether [*here follow the language of the third issue, ex gr.,* "But whether the said J. S., at the time of the said election in the said first plea within mentioned, was duly qualified according to the provisions of the said act, to be elected and to be a councillor of the said borough and city in the said South Ward, under and by virtue of the said act,"] in manner and form as the said J. S. hath in and by his said [first] plea in that behalf alleged or not; or whether [*here follow the language of the fifth issue,*] \*in manner and form as the said J. S. hath in and by his said [first] [\*383] plea in that behalf alleged or not; or whether [*here follow the language of the sixth issue,*] in manner and form as the said J. S. hath in and by his said [first] plea in that behalf alleged or not, the jurors aforesaid are entirely ignorant, and thereupon they pray the advice of the court of our said Lady the Queen before the Queen herself; and if upon the whole matter aforesaid it shall seem to the said court, that [*here state the affirmative of the third issue, ex gr.,* "That the said J. S., at the time of the said election, in the said first plea within mentioned, was duly qualified according to the provisions of the said act, to be elected and to be a councillor of the said borough and city in the said South Ward, under and by virtue of the said act"], in manner and form as the said J. S. hath in and by his said first plea in that behalf alleged; and that [*here state the affirmative of the fifth issue modo et formâ, &c., as above;*] and that [*here state the affirmative of the sixth issue modo et formâ as above,*] then the jurors aforesaid upon their oath aforesaid do say accordingly; and if upon the whole matter aforesaid it shall seem to the said court, that [*here state the negative of each issue modo et formâ, &c., as above,*] then the jurors aforesaid upon their oath aforesaid, do say accordingly; and as to the [fourth] issue within joined, the jurors aforesaid upon their oath aforesaid further say that [*here find the affirmative or negative of this issue,*] in manner and form as the said J. S. hath in his said [first] plea in that behalf alleged; and as to the [seventh] issue within joined, the jurors aforesaid, upon their oath aforesaid, further say, that [*here find the affirmative or negative of this issue modo et formâ, &c., as above, and so with respect to all the other issues.*]

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No. 57.

Bill of Exceptions by Defendant.

WHICH said several issues, in manner aforesaid respectively joined between the said Charles Francis Robinson, Esq., coroner and attorney of our said Lady the Queen, for our said Lady the Queen, and the said J. S., afterwards, to wit, at the assizes held at —, in and for the said county, on the — day of —, in the — year of the reign of our said Lady the Queen, before the Hon. Sir A. B., Knt., one of the justices our said Lady

the Queen assigned to hold pleas before the Queen herself, and the [\*384] \*Hon. Sir C. D., Knt., one of the barons of the Exchequer of our [said Lady the Queen, [or "one of the justices of our said Lady the Queen of the Bench,"] justices of our said Lady the Queen assigned to hold the assizes in and for the county of —, according to the form of the statute in such case made and provided, came on to be tried. At which day came there as well the said Charles Francis Robinson, Esq., coroner and attorney of our said Lady the Queen, for our said Lady the Queen, in his own proper person, as the said J. S. by his clerk in court aforesaid; and the jurors of the jury, whereof mention is within made, being called likewise came, and were then and there in due manner drawn by ballot, approved, and sworn to try the said several issues. And thereupon to maintain the said issue [firstly] above joined, to wit, that [*here follow the language of the particular issue*], the counsel learned in the law for the said J. S. gave in evidence on his behalf, that [*here set out the evidence for the defendant*]; whereupon the said counsel for the said J. S. did then and there insist before the said justices, on behalf of the said J. S., that the said several matters so produced and given in evidence on the part of the said J. S. as aforesaid were sufficient, and ought to be admitted and allowed as sufficient evidence, unless the same shall be explained or answered by evidence on behalf of our said Lady the Queen, to entitle the said J. S. to a verdict on the said [first] issue, and prayed the said justices to direct the said jury to that effect; but the counsel learned in the law of and for our said Lady the Queen, did not offer any evidence upon the said issue on behalf of our said Lady the Queen, but did then and there insist before the said justices, that the said several matters so produced and given in evidence on the part of the said J. S. as aforesaid, did not require any explanation or answer by evidence on behalf of our said Lady the Queen, and were not sufficient nor ought to be admitted or allowed to entitle the said J. S. to a verdict on the said [first] issue; and that upon the evidence so given by the said J. S. as aforesaid, our said Lady the Queen was entitled to a verdict on the said [first] issue, and prayed the said justices so to direct the said jury: And the said justices did then and there declare and deliver their opinion to the jury aforesaid, that the said several matters, so produced and given in evidence on the part of the said J. S. as aforesaid, were not sufficient to entitle the said J. S. to a verdict on the said [first] issue, and that the same did not require any explanation or answer by evidence on behalf of our \*said Lady the Queen, and [\*385] with that direction the said justices left the same to the said jury; and the jurors aforesaid then and there gave their verdict for our said Lady the Queen upon the said [first] issue. Whereupon the said counsel for the said J. S. did then and there, and before the giving of the said verdict, except to the aforesaid opinion and direction of the said justices, and insisted that the said evidence was sufficient aforesaid. And inasmuch as the said several matters aforesaid do not appear by the record of the verdict aforesaid, the counsel on behalf of the said J. S. prayed that the said justices would set their hands and seals to this bill of exceptions, containing the several matters so produced and given in evidence on the part of the said J. S. as aforesaid, and the said opinion and direction of the said justices, and the said exception thereto, according to the form of the statute in that case

made and provided ;(a) and thereupon the said Sir A. B. Knt., one of the said justices, at the request of the said counsel for the said J. S., did put his seal to this bill of exceptions, pursuant to the said last-mentioned statute, on the said — day of —, in the — year of the reign of her present majesty.

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No. 58.

Judgment after Verdict for the Crown upon one or more of the Issues, (ante, 238, 239.)

*Copy the record of Nisi Prius, which includes the issue and award of jury process, &c., then go on thus :—*

At which time, to wit, on —, [the day the writ of *distringas* is made returnable in banc,] come as well the said Charles Francis Robinson, Esq., who for our said Lady the Queen in this behalf prosecuteth, in his proper person, as the said J. S. by his clerk in court aforesaid; and the aforesaid justices of assize, before whom the said issues were tried, hath sent here their record had before them in these words, (that is to say), [copy the *postea verbatim*]. Whereupon all and singular the premises being seen and fully understood by the court of our said Lady the Queen now here, [\*386] it is \*considered and adjudged by the said court here, that the said J. S. do not in any manner intermeddle with or concern himself in or about the office, liberties, privileges, and franchises aforesaid, but that he be absolutely forejudged and excluded from exercising or using the same or any of them for the future; and that the said J. S., in order to satisfy our said present Sovereign Lady the Queen, for and on account of the usurpation aforesaid, be taken and so forth; and that the said E. F., the relator above-mentioned in this behalf, do recover against the said J. S. the sum of —, for his costs by him laid out and expended in carrying on his suit in this behalf, according to the form of the statute in such case made and provided.

---

No. 59.

Judgment after Verdict for the Defendant on all the Issues.

*Copy the Record of Nisi Prius which includes the issue and award of jury process, &c.; then go on thus :—*

At which time (to wit), on —[the day the writ of *distringas* is made returnable in banc], come as well the said Charles Francis Robinson, Esq., who for our said Lady the Queen in this behalf prosecuteth, in his proper person, as the said J. S. by his clerk in court aforesaid, and the aforesaid justices of assize before whom the said issues were tried, have sent here

(a) See *The London Grand Junction Railway Company v. Freeman*, 2 Man. & Gr. Gr. 619, where a bill of exceptions tendered under somewhat similar circumstances succeeded.

their record had before them in these words (that is to say), [*copy the pos-  
tea verbatim*]. Whereupon all and singular the premises being seen and  
fully understood by the court of our said Lady the Queen now here, it is  
considered and adjudged by the said court here, that the said office, liber-  
ties, privileges, and franchises, so claimed by him the said J. S. as aforesaid,  
be allowed and adjudged to him; and that he the said J. S. be dismissed  
and discharged by the said court here of and from the premises above charged  
upon him, and that he the said J. S. do depart hence without day in this  
behalf; and also that he the said J. S. recover against the said E. F., the  
relator above-named in this behalf, the sum of — for his costs by him  
laid out and expended in defending his suit in this behalf, according to  
the form of the statute in such case made and provided.

[\*367]

\*No. 60.

Capias pro fine.

VICTORIA, by the grace of God of the United Kingdom of Great Britain  
and Ireland, Queen, Defender of the Faith, to the sheriff of —, greeting.  
We command you, that you do not forbear, by reason of any liberty in your  
bailiwick, but that you take J. S., of —, [gent.], if he shall be found in your  
bailiwick, and him safely keep so that you may have his body before us on  
—, wheresoever we shall then be in England, to satisfy us concerning  
his redemption, by reason of his claiming to have, use, and enjoy, the office  
of [mayor of our borough of — in your county], whereof he is impeached,  
and thereupon by a jury of the country taken between us and the said J. S.,  
[or “by his own default,”], he stands convicted as in our court before us it  
appears upon record, and have you then there this writ. Witness, Thomas  
Lord Denman, at Westminster, the —, day of —, in the — year of  
our reign.

By the Court,  
ROBINSON.

*Indorsed,*  
D. and B., clerks in court for  
the prosecutor.

N. B.—This writ is proper where the defendant is to be fined upon an  
information at common law, or when filed by the attorney-general ex officio.  
Upon informations under the stat. 9 Ann. c. 20, the fine is nominal only,  
and is included in the taxed costs.

No. 61.

Fi. Fa. against Defendant for the Relator's Costs.

VICTORIA, by the grace of God of the United Kingdom of Great Britain  
and Ireland Queen, Defender of the Faith, to the sheriff of —, greeting.

We command you, that you do not forbear, by reason of any liberty in your bailiwick, but that you levy or cause to be levied upon the goods and chattels of J. S., late of —, [gent.], the sum of —, which hath been lately adjudged to E. F., of —, [surgeon], in our court before us, according to the form of the statute in such case made and provided, for his costs by him laid out and expended in the prosecuting of a certain information in the nature of a quo warranto, exhibited against him the said J. S. by Charles Francis Robinson, Esq., \*our coroner and attorney in our court before us, at the relation of the said E. F., for usurping the office [\*388] of mayor [or "an alderman," or "a councillor"] of our borough of —, in your county, whereof the said J. S. is convicted, as in our said court before us it appears upon record, together with interest upon the said sum of —, at the rate of four pounds per centum per annum, from the — day of —, in the year of our Lord —, on which day the judgment aforesaid was entered up; and that you have that money, with such interest as aforesaid, before us on —, wheresoever we shall then be in England, to satisfy the said E. F. for his costs and interest as aforesaid, and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf; and in what manner you shall have executed this our writ make appear to us on the said —, wheresoever, &c., and have you then there this writ. Witness, Thomas Lord Denman, at Westminster, the — day of —, in the — year of our reign.

By the Court,

ROBINSON.

*Indorsed.*

Levy £—, with interest thereon,  
as within mentioned

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No. 62.

Ca. Sa. against Defendant for the Relator's Costs.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of —, greeting. We command you, that you do not forbear, by reason of any liberty in your bailiwick, but that you take J. S., late of —, [gent.], if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us, on —, wheresoever we shall then be in England, to satisfy E. F., of —, [surgeon], for the sum of —, which hath been lately adjudged to the said E. F., in our court before us, according to the form of the statute in such case made and provided, for his costs by him laid out and expended in the prosecution of a certain information in the nature of a quo warranto exhibited against him the said J. S., by Charles Francis Robinson, Esquire, our coroner and attorney, in our court before us, at the relation of the said E. F., for usurping the office of mayor [or "an alderman," or "a \*councillor"] of our borough of —, in your county, whereof the said J. S. is convicted, as in our said court [\*389] before us it appears upon record, together with interest upon the said sum of —, at the rate of four pounds per centum per annum, from the —

day of —, in the year of our Lord —, on which day the judgment aforesaid was entered up, and have you then there this writ. Witness, Thomas Lord Denman, at Westminster, the — day of —, in the — year of our reign.

By the Court,  
ROBINSON.

*Indorsed.*

Levy £ —, with interest thereon,  
as within mentioned.

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No. 63.

**Fi. Fa. or Ca. Sa. against the Relator for Defendant's Costs.**

*Same as ante, Nos. 61 & 62, except as to the names of the parties, and instead of saying for his costs by him laid out and expended "in the prosecution," say "in his defence" of a certain information, &c., whereof the said E. F. is convicted, &c.*

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No. 64.

**Scire Facias for Costs by the Administrator of the Relator, and Fi. Fa. thereon.**

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of — greeting. Whereas E. F., late of &c., surgeon, lately in our court before us, (that is to say) in — term, in the — year of our reign, by the consideration and judgment of the said court, recovered against J. S., late of &c., gent. £250, which were adjudged to the said E. F. in our said court before us, according to the form of the statute in such case made and provided, for his costs by him laid out and expended in the prosecution of a certain information in the nature of a quo warranto, at the relation of the said E. F., against the said J. S., in our said court before us, for usurping the office of [a councillor] of the borough of C., in your county, whereof he is convicted, as [\*390] \*in our said court before us it appears upon record; and afterwards, to wit, on the — day of —, in the — year of our reign, at C. aforesaid, in your county, the said E. F. died intestate; after whose death, administration of all and singular the goods and chattels, rights and credits which were of the said E. F., at the time of his death, was committed by *William*, by Divine Providence Archbishop of Canterbury, Primate of all England and Metropolitan, on the — day of —, in the year of our Lord —, at C. aforesaid, in your county, to one F. F., as by the information of the said F. F., in our said court before us, we are given to understand and be informed; and although judgment be given thereof,

yet execution of the said costs with interest upon the said sum of £250, at the rate of £4 per centum per annum, from the — day of —, in the year of our Lord —, on which day the judgment aforesaid was entered up, still remains to be done. Wherefore the said F. F. hath humbly besought us that a fit and proper remedy may be provided in this behalf; and we being willing that due and speedy justice should be done in this behalf, as it is reasonable, do command you, that by good and lawful men of your bailiwick, you cause the said J. S. to be before us on —, wheresoever we shall then be in England, to shew if he hath or can say any thing for himself why the said F. F. should not have execution against him the said J. S. for costs aforesaid, according to the form and effect of the judgment aforesaid, with such interest as aforesaid, if he shall think fit; and have you then there the names of those by whom you shall so make it known to him, and this writ. Witness, Thomas Lord Denman, at Westminster, the — day of —, in the — year of our reign.

By the Court,  
ROBINSON.

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No. 65.

Fi. Fa. thereon.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of —, greeting. We command you, that you do not forbear, by reason of any liberty in your bailiwick, but that of the goods and chattels of J. S., late of &c., gent., you cause to be levied £250, which were adjudged to E. F., late of &c., surgeon, lately deceased, in \*his lifetime, in our court before us, according to the form of the statute in such case made and provided, [\*391] for his costs by him laid out in the prosecution of a certain information in the nature of a quo warranto in our said court before us, at the relation of the said E. F. against the said J. S. for usurping the office of [a councillor] of the borough of C., in your county; and is thereupon convicted as in our said court before us it appears upon record, together with interest upon the said sum of £250, at the rate of £4 per centum per annum, from the — day of —, in the year of our Lord —, on which day the judgment aforesaid was entered up; and whereupon it hath been considered in our same court before us, that F. F., administrator of all and singular the goods and chattels, rights and credits which were of the said E. F. at the time of his death, who died intestate, having execution against the said J. S. of the said costs, according to the force, form, and effect of the said judgment, with such interest as aforesaid, as likewise appears to us of record; and have you that money, with such interest as aforesaid, before us on —, wheresoever we shall then be in England, to render to the said F. F. for the costs and interests aforesaid; and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this

behalf, and in what manner you shall have executed this our writ make appear to us on the said —, wheresoever, &c.; and have you then there this writ. Witness, Thomas Lord Denman, at Westminster, the — day of —, in the — year of our reign.

By the Court,  
ROBINSON.

*Indorsed.*

Levy £—, with interest thereon,  
as within mentioned.

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## ADDENDA.

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SINCE the foregoing part of this work was printed, an Act of Parliament has been passed, (which will come into operation on the first day of January, 1844,) to the following effect :—

By 6 Vict. c. 20, intituled “ An Act for abolishing certain Offices on the Crown side of the Court of Queen’s Bench, and for regulating the Crown Office ;” after reciting that the ancient office of the Queen’s coroner and attorney in the Court of Queen’s Bench, commonly called the Master of the Crown Office, hath lately become vacant by the death of Peregrine Dealtry, Esquire ; and Charles Francis Robinson, Esquire, hath been appointed to the said office, to prevent the inconvenience which would have arisen from delay in filling it up, but subject to such arrangements and regulations as might by Parliament be deemed expedient ; and reciting that it is desirable to relieve the public and the suitors from many ancient and unsuitable fees now taken in the Crown Office, and to remodel the present establishment, and that the offices or employments of the clerks in court, and certain other offices now existing in the said Crown Office, should be abolished : and reciting that under the provisions of an act passed in the first year of the reign of his late Majesty King William the Fourth, intituled “ An Act for regulating the Receipt and future Appropriation of Fees and Emoluments receivable by Officers of the Superior Courts of common Law,” compensation has been awarded to the whole of the present officers who are entitled thereto, and whose offices will cease under the \*provisions of this [\*394] act ; It is enacted (amongst other things) “ That from and after the first day of January, 1844, the only officers on the crown side of the said court shall be the Queen’s coroner and attorney, one master, and one assistant master ; and from and after that day the several offices or employments now existing in the Crown Office of Secondary, of clerk of the rules, of clerk of the affidavits, of examiner, of calendar keeper, of clerk of the grand juries, of clerks in court, and of the Queen’s clerk in court, shall be and the same



are hereby abolished, and shall wholly cease and determine." Sect. 8 enacts, "that no person holding any such office of the Queen's coroner and attorney, master or assistant master, or being a clerk on the crown side of the said court, shall either directly or indirectly act as a barrister, attorney, or solicitor, or as agent of any attorney or solicitor, in any court of law or equity in the United Kingdom, either separately or in partnership with any other person, during such time as he shall hold such office, or act as such clerk." Sect. 14 enacts, "That the solicitors for the several public boards, and all persons admitted or admissible to practise as attorneys in the Queen's Bench shall be allowed in like manner to practise on the crown side of the said court, any law or usage to the contrary notwithstanding, upon payment nevertheless of such fees, in respect of the business transacted by such attorneys on the crown side of the said court, as shall by the said Lord Chief Justice and Judges of the said court be fixed and appointed, under the provisions hereinafter expressed and declared in that behalf." Sect. 15 enacts, "That it shall and may be lawful for the Lord Chief Justice and the Judges of the said court, or any three or more of them, and they are hereby required on or before the first day of January, 1844, to establish and ordain, by their discretion, a *table of fees*, to be thereafter taken by the said Queen's coroner, and attorney, and master, and to vary and afterwards modify the same from time to time as they shall think fit; and the fees so established and ordained shall be deemed and taken to be the lawful fees of the Crown Office: Provided always, that no fees whatever shall be demanded or received by the said coroner and attorney, master, or assistant master, or by any person employed by them in the said office, for or in respect of any act, duty, or service, required to be done, performed, or rendered by them, or any of them, in the course of any proceedings carried on in the said office directly at her Majesty's suit and charge; and the said coroner and attorney, master and assistant master, and the several persons employed by them in the said office, are hereby authorized and required to perform and render such acts, duties and services, as may be required in the course of such last-mentioned proceedings, without payment of any fee whatsoever in respect thereof." Sect. 16 enacts, "That it shall and may be lawful for the said Lord Chief Justice, and the Judges of the said court, or any three or more of them, to make such rules, orders, and regulations, from time to time for the care and custody of the records and other proceedings on the crown side of the said court, and the enrolment thereof, and the issuing, returning, and filing of writs and other proceedings, and all other matters and things relating to the practice, and the general business to be transacted on the crown side of the said court, as to them shall seem fit and proper." Sect. 17 enacts, "That from and after the said first day of January, 1844, all acts, duties, and services, now done, performed, and rendered by the said officers so abolished by this act, or any of them, in their respective offices on the crown side of the said court, except so far as the same may be altered or regulated in pursuance of this act, shall continue to be done, performed, and rendered by the said Queen's coroner and attorney, and master and assistant master, or their successors, or by one of them; and such acts, duties, and services, when so done, performed, and rendered by the said officers, or their successors, or one of them, shall be good and valid in law to all intents and purposes: Provided always, that the several acts, duties, and services, now

and heretofore done, performed, and rendered by the clerks in court on the crown side of the said court, shall, \*from and after the said first day [396] of January, 1844, be done, performed and rendered by the solicitors for the several public boards, and by the attorneys of the said court, in like manner as the business of the like description is now transacted on the civil side of the said court; provided also, that all moneys paid into the said court for her Majesty's use, shall continue to be received as heretofore by the said Queen's coroner and attorney; and the several accounts of fines, issues, amerciaments, penalties and recognizances, set, lost, imposed, or forfeited to or for the use of her Majesty in the said court, required by any act now in force to be rendered and made by the said coroner and attorney, and all other acts, duties, and services, now done, performed, and rendered by the said coroner and attorney, touching the receipt and payment of moneys to or for the use of her Majesty, and the accounts to be rendered thereof, shall continue to be done, performed, and rendered as heretofore by the said Queen's coroner and attorney."

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The above act scarcely affects the proceedings treated of in this work, except indeed to this extent, viz. that after the first day of January, 1844, the attorneys of the court are to issue the writs and take the necessary proceedings in their own names, instead of doing so through the medium of clerks in court, whose offices are then abolished. It does not appear that the text of this work, and the forms given in the Appendixes, will require any further alteration than the substitution of the word "*attorney*," instead of "*clerk in court*," for the prosecutor or defendant (*as the case may be*.) Some material alterations must necessarily take place in the allowance for costs, in consequence of the abolition of the clerk in courts' fees, &c. ; and, therefore, the author has omitted precedents of "*bills of costs*," which he had originally intended to introduce.

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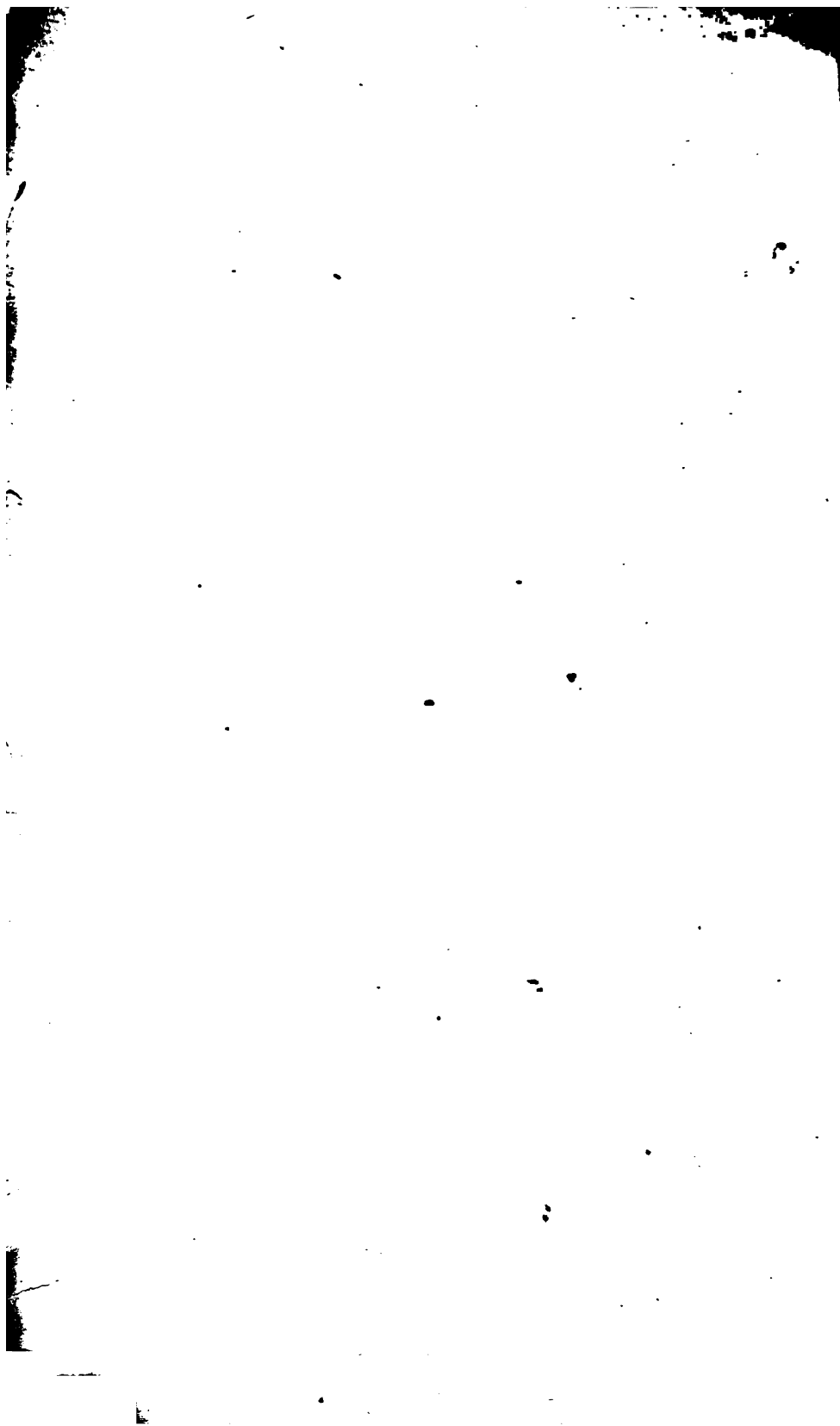
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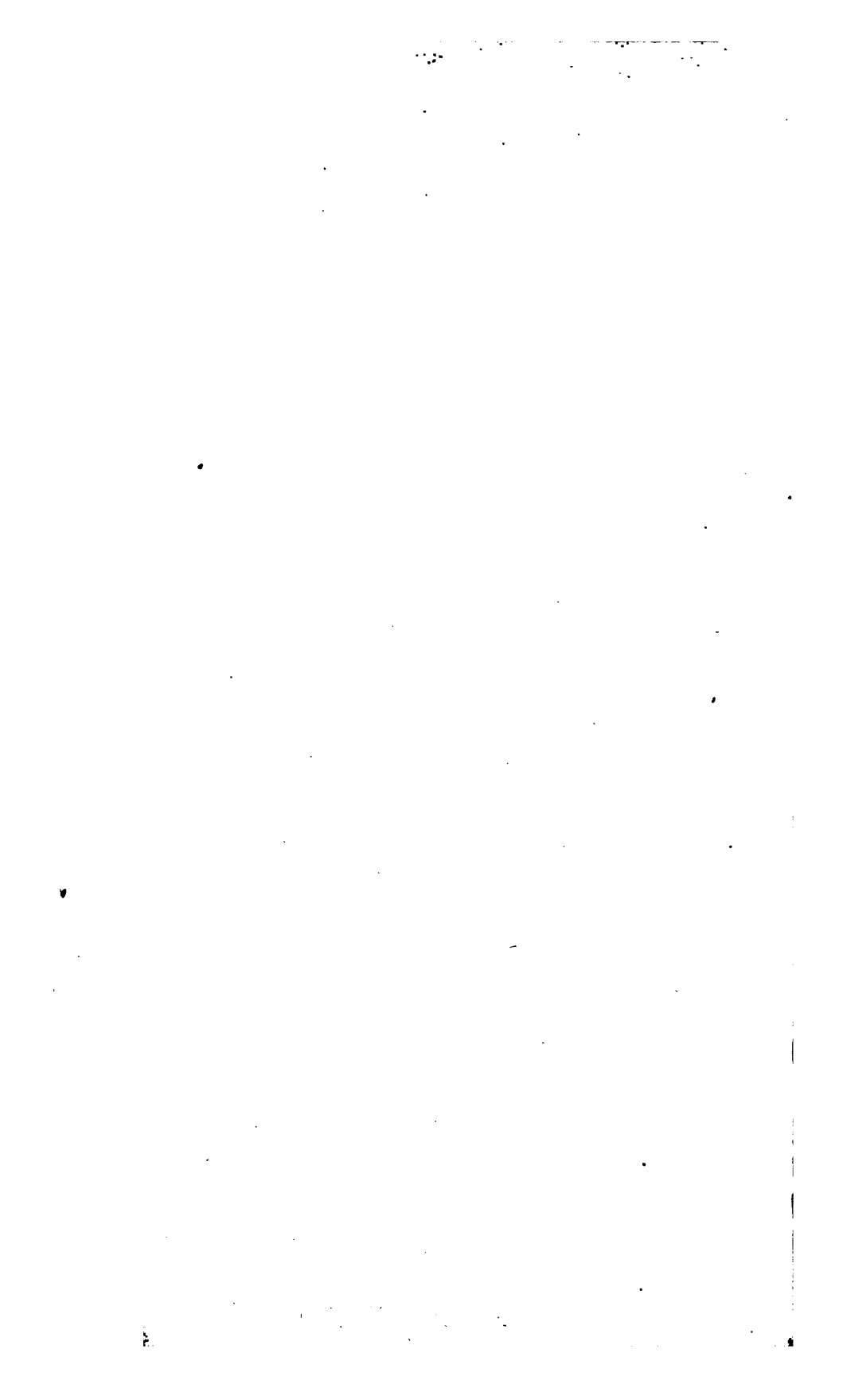


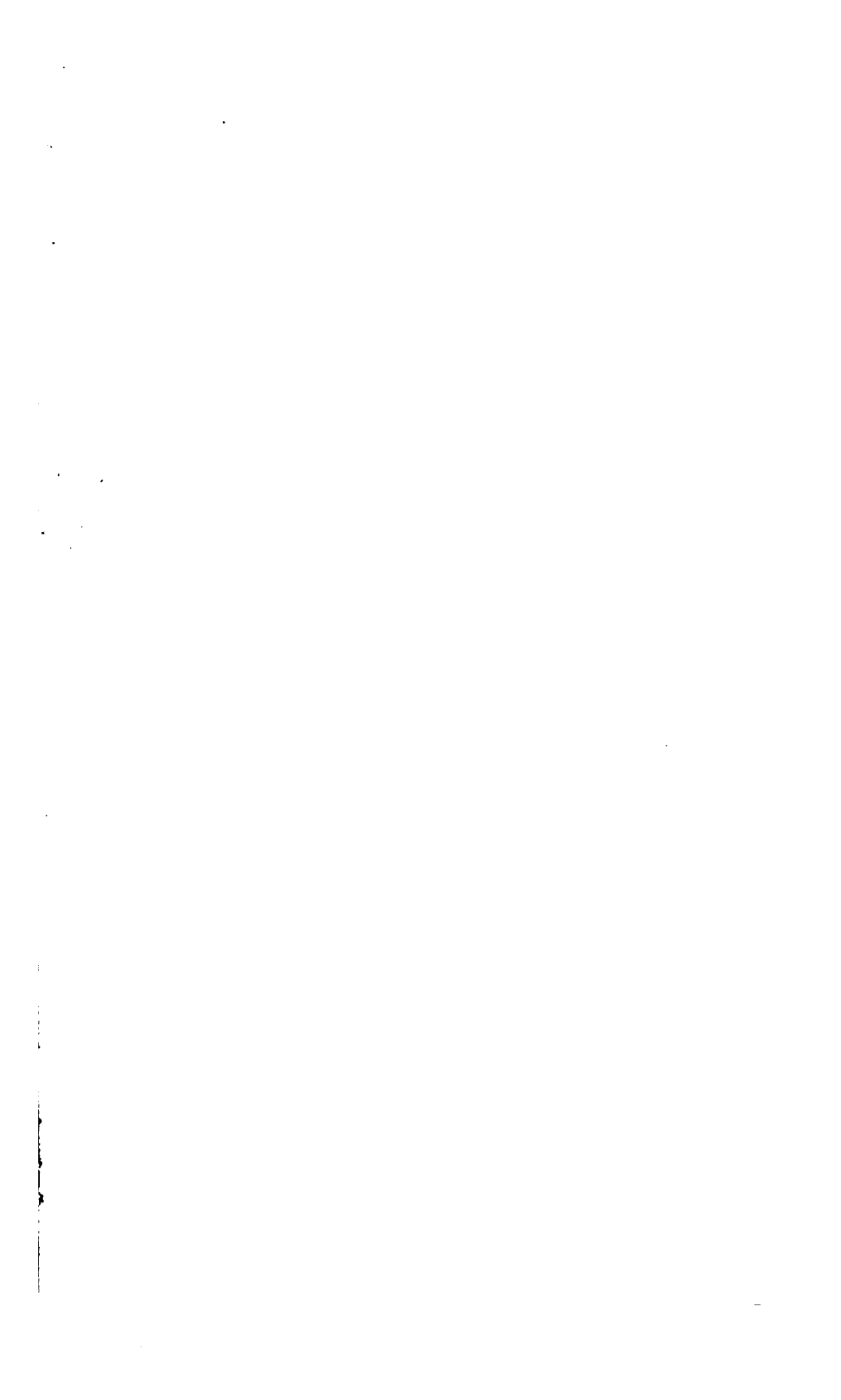






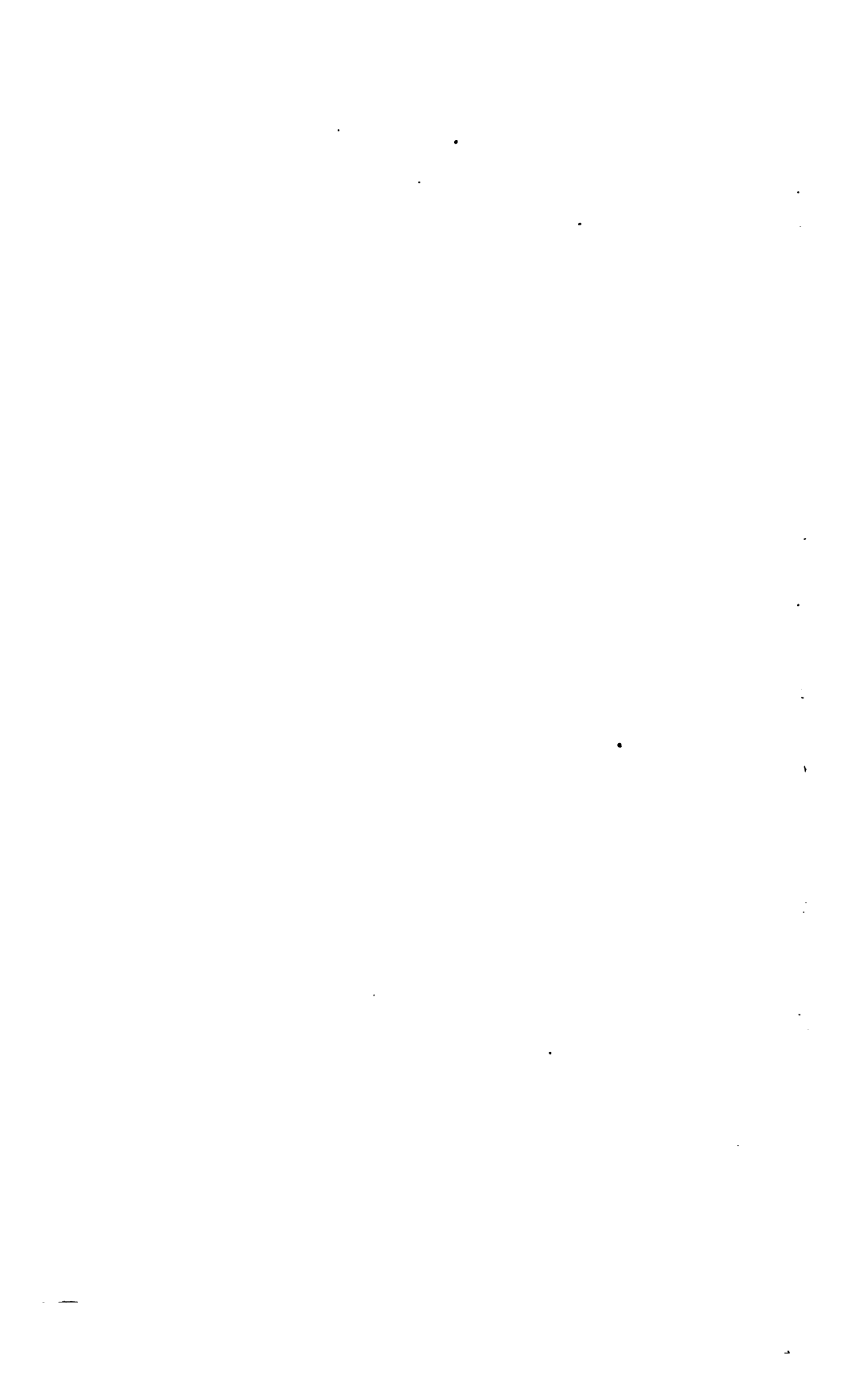
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